TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1963

No. 402

J. I. CASE COMPANY, ET AL., PETITIONERS,

vs.

CARL H. BORAK, ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 26, 1963
CERTIORARI GRANTED NOVEMBER 12, 1963

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 402

J. I. CASE COMPANY, ET AL., PETITIONERS,

vs.

CARL H. BORAK, ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

INDEX

RECORD PRESS, PRINTERS, NEW YORK, N. Y., DECEMBER 30, 1963

[fol. 10] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

CARL H. BORAK, Plaintiff,

v.

J. I. CASE COMPANY, a Wisconsin corporation, JOHN T. BROWN, H. G. BARR, L. R. CLAUSEN, WILLIAM J. GREDE, and WILLIAM B. PETERS, Defendants.

COMPLAINT—Filed November 13, 1956

Plaintiff, by his attorneys, Bruno V. Bitker, Alex Elson and Arnold I. Shure, alleges upon information and belief, except for paragraphs 1 to 7 inclusive, 9, 10, 11, 12, 13, 14, 15, 22 and 23, as follows:

1. Plaintiff Carl H. Borak, at all times herein mentioned was and now is a resident and citizen of the State of Illinois. He has been, since 1952, the registered and actual owner and holder of common stock of J. I. Case Company, formerly J. I. Case Threshing Machine Company, hereinafter referred to as "Case", 1,000 shares of which he purchased in 1952, and 1,000 shares of which he purchased in 1955.

2. Plaintiff brings this action in a representative capacity on behalf of himself and all of the common stockholders of Case, who are similarly situated to him, and alleges that he is well able to fairly and effectively represent such common stockholders.

3. Defendant Case, a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, [fol. 11] is a resident of and doing business in that State and has its principal office in that State.

4. Defendants John T. Brown, H. G. Barr, William J. Grede, and William B. Peters were, at all times relevant hereto, officers and directors of Case. Defendant John T. Brown has been a director of Case since 1947 and was and

now is Chairman of the Board of Directors and President of Case. Defendant H. G. Barr has been a Director of Case since 1952 and was and now is Vice President of Case. Defendant L. R. Clausen has been a director of Case since 1924 and was Chairman of the Board of Case until November 1, 1955. Defendant William J. Grede has been a director of Case since 1953 and now is Chairman of the Executive Committee of Case. Defendant William B. Peters has been a director of Case since 1955 and was and now is Treasurer and Controller of Case. Said defendants are residents of the State of Wisconsin.

5. This action is not a collusive one instituted for the purpose of conferring upon a court of the United States jurisdiction of a cause of action over which it would not otherwise have cognizance, and the jurisdiction of this court depends upon diversity of citizenship.

6. The matter in controversy, exclusive of interest and costs, exceeds the sum or value of Three Thousand ($3,000.00) Dollars.

7. Case is a full line producer of farm machinery, including tractors and all of the equipment generally used in plowing, tilling, fertilizing, planting and seeding, cultivating, making hay and silage and harvesting grains, seeds, corn and many other crops. In addition, it produces and sells for non-farm use wheel tractors and power engine units. It and its predecessors have been in the farm machinery business since 1842.

[fol. 12] 8. American Tractor Corporation, hereinafter referred to as "ATC" was founded in 1948 under the name of Washington Tractor and Farm Equipment Corporation and changed its name in 1949 to American Tractor Corporation. In 1950 it purchased from the Federal Machine and Welder Company of Warren, Ohio, the manufacturer of the USTRAC crawler tractor, a substantial inventory of Ustrac and Clarkair tractor parts and the use of all the engineering drawings, jigs, dies, fixtures and tooling of the Ustrac tractor. It acquired a factory site at Churubusco, Indiana in 1950 consisting of a frame building with a floor area of approximately 6,900 square feet.

Since that time it has engaged in an extensive new product development and tooling program. It now claims to have a line of five models of crawler tractors, together with a line of loaders with bulldozers, angledozers, and other industrial and specialized equipment. The business of ATC is further described in Exhibit A attached hereto, pages 11 through 13.

9. On or about September 6, 1956, the Boards of Directors of Case and ATC approved plans for the merger of the two companies. On or about October 2, 1956, the Board of Directors of Case approved the plan of merger. Under date of October 15, 1956, Case issued to its stockholders a printed brochure, including the following: letter signed by defendant J. G. Brown as President and Chairman of the Board, a notice of Special Meeting of Stockholders to be held November 15, 1956, to consider and take action upon the plan of merger; a proxy statement describing the plan; the plan of merger; articles of merger and certificate of consolidation. The brochure is attached hereto and made a part hereof as Exhibit A.

10. The capitalization of Case as of July 31, 1956, was as follows:

[fol. 13]

Twenty-five year 3½% Sinking Fund Debentures due February 1, 1978 (Sinking Fund payments of $630,000 per year are required, starting in 1958).—		$25,000,000
Capital Stock:		
7% cumulative preferred stock: authorized—101,825 shares $100.00 par value each; issued—92,906 shares—	$9,290,600	
Common Stock: Authorized—4,000,000 shares of $12.50 par value each; issued—2,262,766 shares	28,284,575	37,575,175

11. The capitalization of ATC as of July 31, 1956, was as follows:

Long term indebtedness—	
Secured by first real estate mortgage on plant and plant site held by the Marine Midland Trust Company of New York and by chattel mortgage on all machinery owned and hereafter acquired, of which $99,000 as of July 31, 1956, is shown as a current liability and $801,000 is shown as a long term obligation. The $900,000 balance is payable $9,000 a month for twelve months commencing September 30, 1956, $16,500 per month for the next year and $18,000 a month thereafter; long term obligation—	801,000
250,000 shares of convertible preferred stock par value $20.00 a share, of which the following shares were outstanding as of October 1, 1956:	
Convertible Preferred Stock, Series 55-1, convertible into shares of common stock at a price of $20.00 per share—	12,500 shares
Convertible Preferred Stock, Series 56-1, convertible into shares of common stock at a price of $16.00 per share—	50,000 shares
Convertible Preferred Stock, Series 56-2, convertible into shares of common stock at a price of $16.00 per share—	50,000 shares
Authorized common stock of 2,000,000 shares at 25¢ par value issued and outstanding at July 31, 1956—	1,107,704

As of October 1, 1956, there were outstanding options to purchase an aggregate of 9,547 shares of stock of ATC.

There were also outstanding on the same date stock purchase warrants to purchase an aggregate of 180,000 shares of common stock of ATC, and 137,500 shares of common stock against conversions of convertible preferred stock.

[fol. 14] 12. Under the plan of merger there will be added to the authorized capital stock of Case 1,300,000 shares of a new 6½% cumulative preferred stock par value $7.00 a share. In addition the common stock of Case will be increased from 2,262,766 shares to 2,816,618. If the plan of merger is approved each share of common stock of ATC will be converted into (1) ½ share of common stock of Case and (2) 1 share of the new 6½% second cumulative preferred stock of Case.

13. Without waiting for shareholder approval of its action, and even before formal approval of the Board of Directors of the plan of merger, the defendant officers of Case caused Case, on or about September 24, 1956, to purchase 50,000 shares of ATC convertible preferred stock, series 56-2, at a price of $20.00 per share or an aggregate of $1,000,000. They also caused Case to purchase on the same date, for $500.00, stock purchase warrants entitling the holder to purchase an aggregate of 90,000 shares of ATC common stock at $16.00 a share until September 24, 1959. The proxy statement states that the said shares and warrants were purchased by Case to provide ATC with working capital pending the effectiveness or abandonment of the merger. (Exhibit A hereto attached, p. 3).

Under the terms of the merger plan all outstanding shares of convertible preferred stock of ATC, including the 50,000 shares of convertible preferred stock, series 56-2, held by Case will be redeemed at a price of $21.00 a share. This is to be accomplished by Case providing sufficient funds to enable ATC to make such redemption. In order to make such redemption Case will be required to provide $2,362,500, of which $1,050,000 would represent redemption of the $50,000 shares of ATC convertible preferred stock, series 56-2, held by Case. Under the terms of the plan of [fol. 15] merger the warrants to purchase ATC common stock held by Case would terminate when the merger is consummated. However, holders of the remaining warrants to purchase 90,000 shares of ATC common stock would be

entitled to purchase, up to February 2, 1959, at the price of $16.00 per share of ATC common stock, the number of shares of common stock and 6½% second cumulative preferred stock par value $7.00 a share to which they would have been entitled had they exercised their warrants to purchase shares of ATC common stock and held such shares at the date of merger.

14. Under the terms of the proposed amendment to the articles of association of Case, provision is made for the 6½% second cumulative preferred stock as follows: Each share of such stock is entitled to receive, when and as declared by the Board of Directors, before any dividends are paid on common stock, dividends at the rate of 6½% of the par value thereof, payable quarterly; such dividends to accrue from date of issue if that be a dividend day, or otherwise five days after the date of the approval of the merger by stockholders of Case and ATC. Holders of such stock have the right, voting as a class, to elect two members of Case to the Board of Directors if, at any time, six quarterly dividend instalments, whether or not consecutive, have not been paid to holders of such stock. In any voluntary liquidation subject only to the prior rights of the 7% cumulative preferred stock, holders of second cumulative preferred stock are entitled to receive $7.35 per share plus accrued dividends; in the case of involuntary liquidation $7.00 per share plus accrued dividends. Stock is redeemable at the option of Case on not less than thirty (30) days notice at $7.35 per share plus accrued dividends, unless there are unpaid accrued dividends on the 7% cumulative preferred stock. Case may not redeem the second cumulative preferred stock if dividends [fol. 16] have not been paid unless it redeems all of the outstanding shares. Holders of second cumulative preferred stock have preemptive rights with respect to any authorized and unauthorized shares of such stock which may be issued in Case.

15. Contrary to the statement made in the proxy statement (Exhibit A hereto attached, p. 2), that "Shares of Common Stock and 7% Cumulative Preferred Stock of

Case outstanding on the effective date of the merger will not be affected as a result of the merger, and will remain outstanding as shares of Case, surviving corporation" the effect of the merger if approved will be to increase the dividend requirement which must be met before any dividends can be paid to common stockholders, to a total of $1,154,347 per annum, (exclusive of any additional dividend requirement which may result to warrant holders for 90,000 shares of ATC stock upon exercise of warrant rights) of which $504,005 will be payable to the holders of the second cumulative preferred stock as a result of the merger. There will be a further charge against earnings of an amount which, according to the proxy statement, is presently undeterminable, for amortization of excess of costs of assets acquired over assigned value thereof. According to the pro-forma balance sheet dated July 31, 1956, giving effect to the merger, such excess of cost of assets is shown as $11,990,665, which, according to note 5 to the pro-forma balance sheet, will be amortized over a period not in excess of twenty years (Exhibit A hereto attached, pp. 38-40). Depreciation of approximately $80,000 a year on the increased carrying value of the property, plant and equipment of ATC will also be a charge against earnings. The dividend rights of holders of both 7% and 6½% preferred stock are cumulative to the extent that no dividends can be [fol. 17] paid to holders of common stock until all dividends are paid to preferred stockholders. In addition, as above pointed out, holders of such second cumulative preferred stock resulting from the merger would have the right under the circumstances set forth above to elect as a class two members of the Board of Directors and would have the right either in voluntary or involuntary liquidation to a prior claim to the assets of the corporation, in an amount not less than $7,753,928.

16. Another immediate and direct consequence of the proposed merger will be to dilute the present book value of the common stock of Case, by the issuance of 553,852 additional shares of common stock, to the injury of the present shareholders of Case. Dilution would result in a loss per share of approximately $10.00 per share.

17. Contrary to the representations made by the defendant officers of Case in Exhibit A hereto attached, the proposed merger is against the best interests of the common stockholders of Case similarly situated to plaintiff, and is in fact seriously prejudicial to their rights. Said plan of merger has not been formulated or developed in conformity with the obligations imposed upon defendant officers and directors of Case by law.

(a) The primary effect of the merger is to give voting control of Case to outsiders not previously associated with management and not shareholders of the company. This results from the exchange of shares under the proposed merger which would give to the shareholders of ATC approximately 14% of the voting rights of Case, of which approximately one-half would be in the hands of two individuals, Marc B. Rojtman and his wife, Lillian Rojtman. Because the stock of Case is held by approximately 8,000 persons and institutions widely scattered throughout the country and is, for the most part owned in small amounts, these stockholders of ATC would be given effective voting control over Case. It would appear that the present man-
[fol. 18] agement, by giving three places on the Board of Directors to ATC stockholders and an important position to Marc B. Rojtman, hopes to have the benefit of the voting rights of Mr. Rojtman and his associates and, through him and his associates continue in the management of Case. In addition to fees and salaries received by the defendant officers in excess of $300,000 per year, the officers also take part in a pension plan and certain of defendant officers will be entitled to participate in a liberalized stock option plan submitted for stockholder approval at the same time as the merger.

(b) Since the end of 1952 the sales and earnings of Case have sharply decreased. Although there has been a general decline in the farm implement industry, Case has not kept its share of the market and its sales and earnings have declined considerably more than its competitors. The record of sales, earnings and dividends, beginning with the year 1952 are as follows:

Fiscal Year Ended October 31	Net Sales (000 Omitted)	Net Earnings or (Loss) (000 Omitted)	Net Earnings or (Loss) Applicable to Common Stock (000 Omitted)	Per Share of Common Stock, Par Value $12.50(1) Net Earnings or (Loss)	Per Share of Common Stock, Par Value $12.50(1) Dividends Paid
1952	142,898	7,049	6,399	282	2.50
1953	104,463	781	131	.06	2.00
1954	87,112	(549)	(1,199)	(.53)	.50
1955	88,894	903	253(6)	.11	—
Nine months ended July 31, 1955 (unaudited)	68,009	25	(463)	(.20)	—
1956 (unaudited)	59,612	(3,703)	(4,191)	(1.85)	—

( ) Indicates negative figure.

[fol. 19] (c) Examination of the balance sheet of Case for the year ended October 31, 1955, and for July 31, 1956 (Exhibit A attached hereto, pp. 24-25) shows that there has been, since October 31, 1955, an increase of almost $14,000,000 in customer accounts from $46,364,981 on October 31, 1955, to $60,802,870. During the same period inventories have been reduced approximately two and one-half million dollars and accumulated earnings retained in the company have been reduced in excess of $4,000,000. Sales have sharply declined in the first nine months ended July 31, 1956. Sales for this period were $59,612,000 in contrast with $68,009,000 for the comparable period of the previous fiscal year. A substantial part of such sales are in fact, paper sales to dealers with the understanding that the dealers will not have to pay for the equipment placed with them unless actually sold. That even with such inflated sales there was a net loss for the first nine months ending July 31, 1956 of $3,703,000 and net loss applicable to common stock of $4,191,000 or $1.85 per share of common stock.

(d) In a desperate effort to attempt to ward off stockholders of the Company and the possibilities of a proxy fight which conceivably would upset the control of management in the hands of the defendant officers, defendants ar-

ranged the merger transaction with ATC herein referred to.

(e) Section 180.14 of the Wisconsin Business Corporation Law, as amended, provides: "Shares having a par value may be issued for such consideration, *not less than par value thereof*, as shall be fixed from time to time by the Board of Directors" (italics supplied). In fixing the consideration for the shares of stock to be issued by Case to ATC for the assets of ATC if the merger is effected, the [fol. 20] Board of Directors of Case, acting under the domination and control of the defendant officers, violated the said provision of said Section 180.14, in that the consideration fixed was less than the par value of such securities.

The Board of Directors of Case, acting under the domination and control of the defendant officers, fixed what they describe as "the minimum fair value of the net assets of ATC to be acquired in the merger" as $14,757,068. (Exhibit A attached hereto, p. 40). The par value of the securities is $14,677,078, determined as follows:

1,107,704 shares of 6½% Second Cumulative Preferred Stock, $7 par value—	$ 7,753,928
553,852 shares of Common Stock, $12.50 par value—	6,923,150
	$14,677,078

Case also agreed to redeem the preferred stock of ATC at a cost of $2,362,500. While $1,050,000 of the amount is to be received by Case in redemption of 50,000 shares purchased by it as alleged above on September 24, 1956, the effect of the redemption would, nevertheless, result in a cash outlay of $2,362,500 by Case, in addition to the issuance of the securities. In determining the consideration received by Case for the securities so issued there should therefore be deducted from the sum of $14,757,068, determined by the Board of Directors to be the consideration for the assets, the sum of $2,362,500. The consideration received for the securities would accordingly be $12,394,568, or $2,372,510 less than the par value of such securities.

(f) In fixing the consideration to be paid for the shares of Case stock to be issued to ATC stockholders if the merger is consummated, the Board of Directors further [fol. 21] violated the requirements of Section 180.14 and 180.16 of the Wisconsin Business Corporation Act, as amended, by wording their determination of the value of the assets to be received from ATC as a "minimum valuation". The Board of Directors were under a duty to fix the consideration at a specific amount in order that the requirement of Section 180.16 (1) that the par value of the consideration would be shown in the stated capital account and that the excess over par value, if any, would be shown as capital surplus. As appears from the pro-forma balance sheet for Case as of July 31, 1956, giving effect to the merger of Case and ATC (Exhibit A attached hereto, pp. 38-40), the consideration received for the shares of stock of Case is shown only in the stated capital account at the par value of the securities, and no excess over par value is shown in the capital surplus account. From this pro-forma balance sheet it would appear that despite other statements contained in the proxy statement, the consideration received by Case for the shares of Case to be issued by it to shareholders of ATC in the merger were assets of a value not exceeding par value. In failing to fix a certain and determinable dollar amount as to the value of ATC assets, the Board of Directors, acting under the domination and control of the defendant officers, further violated their duty of making it possible for shareholders to form an intelligent and informed judgment on the advisability of the merger.

(g) The value placed upon the assets of ATC is grossly excessive and bears no relationship to the true value. As [fol. 22] appears from the statement of financial condition of ATC (Exhibit A hereto attached, p. 31), the book value of the assets of ATC to be acquired by Case if the merger is consummated, is $2,525,653. The book value of ATC assets attributable to common stock is $1.15 per share in contrast with a book value of $31.29 per share for the common stock of Case after merger. On a book value basis ATC shareholders will be receiving $15.14 of book value for each of their shares in addition to the preferred stock given to them on a share for share basis. In total ATC

shareholders will receive common stock of Case having a book value of $17,320,029 plus preferred stock having a par value of $7,753,928, or a total of $25,073,957 in exchange for shares which have a book value of $1,275,653. On a book value basis the exchange is at a rate in excess of 19 to 1.

Another formula for determining value is that of net earnings. Using net earnings basis the price fixed is grossly in excess of the value of ATC. Case stock is valued for purposes of the exchange at par value of $12.50 per share or approximately eight times average earnings for the five years ended October 31, 1955. ATC is valued for purposes of the exchange at approximately $13.35 per share or 190 times average net earnings for the five year period. Using current earnings figures ATC stock for purposes of the merger is valued at approximately 45 times earnings. The usual formula for valuing stock in the farm implement industry would be to use a factor not exceeding fifteen times annual earnings.

[fol. 23] Much of the justification offered in the proxy statement (Exhibit A attached hereto) for the value placed on ATC relates to the future prospects of ATC. There is much speculation about the benefits which may be derived from the merger. The proxy statement seeks to give the impression that the ATC line of tractors and other equipment is fully developed, and has been tested in the market. The fact is that a number of important products of ATC have not been subjected to industry experience and some have not been marketed at all. In valuing stock it is unsound and unwise to give weight to speculative and conjectural factors concerned with future development. The proxy statement also gives special weight to the recent stock market price of ATC common stock. Said stock market value is a doubtful test of value. It should be pointed out that the par value of the stock was fixed at 25¢ per share after a thousand for one stock split in 1952 and a two for one stock split in 1955. There were no available quotations for ATC common stock on the over-the-counter market price prior to the third quarter of 1954. At that time the low bid and high offer for such stock as reported by the National Quotation Bureau, Inc., for the third quarter of 1954 were 1½ and

2⅞, respectively, and for the fourth quarter of 1954, 3½ and 6⅜, respectively. ATC was not listed on any exchange until January 17, 1955, when it was listed for the first time on the American Stock Exchange. The number of its stockholders is relatively small. The stock has been listed for such a short time and is so unseasoned and untested as to [fol. 24] render dubious the market quotations thereof as being any test of the value of the stock.

(h) In addition to fixing the consideration at a value of approximately $17,000,000 Case has agreed to acquire the assets by way of a merger which, for purposes of corporate federal income tax will be regarded as being a tax-free reorganization (Exhibit A attached, p. 20). If the form of the acquisition had been by purchase and sale rather than by merger the stockholders of ATC would have a capital gains tax to pay upon the profit realized from the sale of their stock and Case would have been able to amortize the excess of the cost of assets over their true value and thereby be enabled to write off a considerable part of the cost as a proper deduction for income tax purposes. It will be noted that in the pro-forma balance sheet of Case as of July 31, 1956, giving effect to the merger with ATC, the excess of costs of assets acquired over the assigned value thereof is shown as $11,990,665. The amortization of the amount is proposed over a twenty year period and will, for the period, reduce the earnings available for dividends to holders of common stock of Case. No part of this amortization will be deducted for income tax purposes (Exhibit A hereto attached, pp. 38, 39, and Note 5, p. 40).

18. As additional consideration to the principal stockholders of ATC—three of their group, Marc Rojtman, Edward L. Elliott and Mentor Kraus, are to be elected directors of Case. It is proposed that Marc Rojtman be made Executive Vice President and General Manager of Case with responsibility for the general management of its business affairs. It is also proposed that he be elected to the Executive Committee of Case. It appears from the proxy statement (Exhibit A attached hereto, p. 15) that no determination has been made of Mr. Rojtman's future salary with Case in the event the merger is consummated. It

[fol. 25] is stated that his salary will initially not exceed $50,000 per annum. It is likely that his salary will be fixed at that amount or close to that amount. In addition it is proposed to grant to him an option to purchase 25,000 shares of common stock of Case upon the merger and the proposed revision of the stock option plan becoming effective.

19. As above stated, there is submitted together with the merger proposal to the shareholders, a proposed amendment to the stock option plan of the company which is summarized in the proxy statement (Exhibit A hereto attached, pp. 16, 17). Under the proposed amendment to the stock option plan it is proposed to increase from 100,000 to 250,000 the aggregate number of shares with respect to which common stock may be granted and to increase from 20,000 to 25,000 the maximum number of shares with respect to which options may be granted to any one person. In addition to the option to be granted to Mr. Rojtman of 25,000 shares upon the merger becoming effective, an option shall also be granted to defendant William Grede, the right to purchase 25,000 shares and to defendant W. G. Brown an option to purchase 19,000 shares. On the basis of the showing of the company in the last three years the proposed amendment to the stock option plan whereby certain defendants are to receive stock options, is further evidence of the failure of defendant officers to properly protect the interests of the common stockholders. The proposed amendment to the stock option plan is part and parcel of the merger plan and suffers from all of the defects of the merger plan.

20. The defendant officers and directors, in fixing the consideration received by Case from ATC shareholders for shares of ATC to be issued to ATC shareholders, also violated the provisions of Section 180.15 of the Wisconsin Business Corporation Law, as amended, in that the payment for such shares is not to be "in whole or in part, in [fol. 26] money, in other property, tangible or intangible, or in labor or services, actually performed for the corporation", as more fully set forth in paragraph 17 hereof.

21. Pursuant to the plan of merger described in Exhibit A attached, a Special Meeting of the Stockholders of Case was called to be held at the principal office of the company at Racine, Wisconsin, November 15, 1956 at 12:00 noon, C.S.T. If, at such Special Meeting of Stockholders, the plan receives the affirmative vote of the holders of at least two-thirds of the outstanding shares of each class of shares entitled to vote as a class thereon, and of the total outstanding shares, the officers would thereby be authorized to execute the Articles of Merger and such merger would become effective under the laws of the State of Wisconsin upon issuance of Certificate of Merger by the Secretary of State, which he is authorized to do upon receiving the certificate and the due recording thereof. Pursuant to the call of the Special Meeting of Stockholders, notices have been sent to shareholders and proxies solicited by management. A copy of such proxy in the form prepared by management is hereto attached as Exhibit B. As shown hereinabove, the proxy statement (Exhibit A hereto attached) fails to properly and fully inform shareholders of important facts relating to the wisdom or soundness of the proposed merger plan and makes affirmative statements which are incorrect and may mislead shareholders. Accordingly, any proxies received by management pursuant to solicitation of management are illegal and should be declared void by the Court.

22. The holders of 7% cumulative preferred stock will not be substantially affected by the plan of merger. Certain of the holders of common stock, including the defendant of-
[fol. 27] ficers and persons affiliated with them, will not be adversely affected by the proposed plan of merger but on the contrary may gain thereby. Plaintiff and other holders of common stock of Case similarly situated to plaintiff will be severely and irreparably damaged if the proposed plan of merger herein described is consummated.

23. Plaintiff has no adequate remedy at law.

Wherefore, plaintiff prays the court:

I. To decree and declare that the plan of merger described in Exhibit A is illegal and void and any action taken pursuant thereto is illegal and void.

II. That the defendants, their agents and employes and each of them, be restrained and enjoined, during the pendency of this litigation and permanently from taking any further action to consummate the plan of merger described herein.

III. For such other and further relief as appears proper.

Bruno V. Bitker, Alex Elson, Arnold I. Shure, Attorneys for Plaintiff.

Bruno V. Bitker, 208 East Wisconsin Avenue, Milwaukee, Wisconsin.

Alex Elson, 11 South LaSalle Street, Chicago 3, Illinois.

Arnold I. Shure, 11 South LaSalle Street, Chicago 3, Illinois.

[fol. 28] *Duly sworn to by Carl H. Borak, jurat omitted in printing.*

J. I. CASE COMPANY

RACINE, WIS. U.S.A.

October 15, 1956

To the Stockholders of J. I. Case Company:

An important step toward desirable diversification by J. I. Case Company is presented to you in the attached proxy material and proposal to merge the American Tractor Corporation of Churubusco (Ft. Wayne) Indiana into J. I. Case Company.

The American Tractor Corporation manufactures an extensive line of light and medium sized crawler tractors and earth moving equipment, none of which duplicates anything the Case Company makes.

The Case Company's business is largely dependent upon the farm market. Diversification into the construction, earth moving and road building fields broadens the base of our product line and extends our market into this area. Therefore, this merger offers an immediate increase in volume and good growth potential.

The American Tractor Corporation has grown very rapidly in the last three years, its volume of net sales increasing from $2,264,000 in fiscal 1954 to $5,280,000 in 1955 and an estimated $10,250,000 in 1956. For this expanding volume it urgently needs additional plant facilities such as we have.

The merger will enable us to utilize our manufacturing facilities, some of which are now idle, in producing for this growing volume as well as in making many parts and components which American Tractor Corporation now obtains from outside sources. It is planned that the Burlington, Iowa, plant of Case, where manufacturing operations have been almost completely suspended, will be used to manufacture some sizes of crawler tractors and equipment and certain sizes of engines will be manufactured at the Rock Island, Illinois, plant. Other parts and components will be produced and manufactured at other Case plants where manufacturing operations are at a low ebb.

The existing branch and farm dealer organization of Case is capable of marketing the American Tractor Corporation's products. This will add to American Tractor's present distribution by providing new selling outlets and will provide Case dealers with a broader line of equipment, strengthening their position and opening up new opportunities for profitable operations. In the export market the Case Company's well established distribution outlets are in a good position to market American Tractor's products and in most countries trade barriers and restrictions are less drastic on this type of equipment than they are on farm machinery.

The American Tractor Corporation's organization, which will come to Case as a result of

[fol. 29]

EXHIBIT A TO COMPLAINT

ESTABLISHED 1842

October 15, 1956

To the Stockholders of J. I. Case Company:

An important step toward desirable diversification by J. I. Case Company is presented to you in the attached proxy material and proposal to merge the American Tractor Corporation of Churubusco (Ft. Wayne) Indiana into J. I. Case Company.

The American Tractor Corporation manufactures an extensive line of light and medium sized crawler tractors and earth moving equipment, none of which duplicates anything the Case Company makes.

The Case Company's business is largely dependent upon the farm market. Diversification into the construction, earth moving and road building fields broadens the base of our product line and extends our market into this area. Therefore, this merger offers an immediate increase in volume and good growth potential.

The American Tractor Corporation has grown very rapidly in the last three years, its volume of net sales increasing from $2,264,000 in fiscal 1954 to $5,280,000 in 1955 and an estimated $10,250,000 in 1956. For this expanding volume it urgently needs additional plant facilities such as we have.

The merger will enable us to utilize our manufacturing facilities, some of which are now idle, in producing for this growing volume as well as in making many parts and components which American Tractor Corporation now obtains from outside sources. It is planned that the Burlington, Iowa, plant of Case, where manufacturing operations have been almost completely suspended, will be used to manufacture some sizes of crawler tractors and equipment and certain sizes of engines will be manufactured at the Rock Island, Illinois, plant. Other parts and components will be produced and manufactured at other Case plants where manufacturing operations are at a low ebb.

The existing branch and farm dealer organization of Case is capable of marketing the American Tractor Corporation's products. This will add to American Tractor's present distribution by providing new selling outlets and will provide Case dealers with a broader line of equipment, strengthening their position and opening up new opportunities for profitable operations. In the export market the Case Company's well established distribution outlets are in a good position to market American Tractor's products and in most countries trade barriers and restrictions are less drastic on this type of equipment than they are on farm machinery.

The American Tractor Corporation's organization, which will come to Case as a result of the merger, is thoroughly experienced in the field and has demonstrated its ability successfully to engineer, produce and market this type of equipment.

During negotiations the representatives of the Case Company were favorably impressed by Mr. Rojtman and developed a high regard for his accomplishments and his organization. Upon approval of the merger, Mr. Rojtman and two of his associates will become directors of the Case Company and Mr. Rojtman will be appointed Executive Vice President and General Manager, with responsibility for and authority over the general management of the business affairs of Case.

In order to meet competition in attracting and holding able executive and administrative personnel, it is proposed to make wider use of the Case Company stock option plan. Therefore, the stockholders are asked to approve its expansion as set forth in the accompanying proxy material.

When the personnel of the two organizations is integrated we shall have a management team equipped to handle this broad step in expansion and diversification and open up new opportunities for progress.

Case will issue pursuant to the merger for each outstanding share of Common Stock of American Tractor, one-half share of Case Common Stock and one share of new 6½% Second Cumulative Preferred Stock, $7 par value, of Case. Based on the outstanding capital stock of American Tractor as of July 31, 1956, Case will issue: 553,852 shares of Common Stock, with an aggregate market value of approximately $7,961,623 as of September 24, 1956, the date the Case Board approved the merger; and 1,107,704 shares of new 6½% Preferred Stock, with an aggregate par value of $7,753,928. Case will also pay American Tractor $2,362,500 to enable American Tractor to redeem its outstanding Preferred Stock. The aggregate market value as of September 24, 1956 of the Common Stock of American Tractor outstanding on July 31, 1956 was $13,984,763. The aggregate redemption price of the outstanding American Tractor Preferred Stock, including the 50,000 shares purchased by Case, is $2,362,500. The net book worth of American Tractor as of July 31, 1956, adjusted to reflect the subsequent issue of the 50,000 shares of American Tractor Preferred Stock to Case for $1,000,000, was $3,525,653. The Board of Directors of Case is of the opinion that the foregoing arrangements reflect a fair price for Case for the acquisition of a going concern such as American Tractor. It should be stressed that the development of a line of products comparable to the American Tractor line would require several years of time and the expenditure of millions of dollars before we could reach the manufacturing and market position occupied by American Tractor Corporation. From the foregoing figures it is evident that we are not buying bricks and mortar or inventory. Rather we are acquiring a developed product, a developed market and a situation which, in the judgment of your Board of Directors, holds great promise for the future.

[fol. 30]

After careful study and analysis of what the merger will do for the stockholders of the Case Company, the Board of Directors unanimously approved it and strongly recommends that you vote in favor of these proposals.

Respectfully yours,

John T. Brown

JOHN T. BROWN,

Company and Mr. Rojtman will be appointed Executive Vice President and General Manager, with responsibility for and authority over the general management of the business affairs of Case.

In order to meet competition in attracting and holding able executive and administrative personnel, it is proposed to make wider use of the Case Company stock option plan. Therefore, the stockholders are asked to approve its expansion as set forth in the accompanying proxy material.

When the personnel of the two organizations is integrated we shall have a management team equipped to handle this broad step in expansion and diversification and open up new opportunities for progress.

Case will issue pursuant to the merger for each outstanding share of Common Stock of American Tractor, one-half share of Case Common Stock and one share of new 6½% Second Cumulative Preferred Stock, $7 par value, of Case. Based on the outstanding capital stock of American Tractor as of July 31, 1956, Case will issue: 553,852 shares of Common Stock, with an aggregate market value of approximately $7,961,623 as of September 24, 1956, the date the Case Board approved the merger; and 1,107,704 shares of new 6½% Preferred Stock, with an aggregate par value of $7,753,928. Case will also pay American Tractor $2,362,500 to enable American Tractor to redeem its outstanding Preferred Stock. The aggregate market value as of September 24, 1956 of the Common Stock of American Tractor outstanding on July 31, 1956 was $13,984,763. The aggregate redemption price of the outstanding American Tractor Preferred Stock, including the 50,000 shares purchased by Case, is $2,362,500. The net book worth of American Tractor as of July 31, 1956, adjusted to reflect the subsequent issue of the 50,000 shares of American Tractor Preferred Stock to Case for $1,000,000, was $3,525,653. The Board of Directors of Case is of the opinion that the foregoing arrangements reflect a fair price for Case for the acquisition of a going concern such as American Tractor. It should be stressed that the development of a line of products comparable to the American Tractor line would require several years of time and the expenditure of millions of dollars before we could reach the manufacturing and market position occupied by American Tractor Corporation. From the foregoing figures it is evident that we are not buying bricks and mortar or inventory. Rather we are acquiring a developed product, a developed market and a situation which, in the judgment of your Board of Directors, holds great promise for the future.

[fol. 30]

After careful study and analysis of what the merger will do for the stockholders of the Case Company, the Board of Directors unanimously approved it and strongly recommends that you vote in favor of these proposals.

Respectfully yours,

John T. Brown

JOHN T. BROWN,
Chairman of the Board
and President.

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS TO BE HELD NOVEMBER 15, 1956

NOTICE IS HEREBY GIVEN that a Special Meeting of the stockholders of J. I. CASE COMPANY will be held at the principal executive office of the Company in Racine, Wisconsin on Thursday, November 15th, 1956, at 12:00 o'clock noon, Central Standard Time, to transact the following business:

1. To consider and take action upon a plan of merger of American Tractor Corporation, a New York corporation, into the Company, as summarized in the Proxy Statement accompanying this notice and as set forth in Exhibit A thereto.

2. To consider and take action upon an amendment of the Stock Option Plan of the Company, as summarized in the Proxy Statement accompanying this notice.

3. To transact such other business as may properly come before the meeting.

The Board of Directors has fixed October 16, 1956 as the record date for the determination of the stockholders of the Company entitled to notice of and to vote at the Special Meeting.

Any holder of Common Stock or Preferred Stock of Case desiring to be paid the fair value of his shares must file a written objection to the plan of merger at least 48 hours prior to the stockholders' meeting, as more fully set forth under the heading "Rights of Dissenting Stockholders" in the Proxy Statement accompanying this notice.

[fol. 31]

By Order of the Board of Directors,

L. T. NEWMAN,
Secretary.

Dated: October 15, 1956

The favorable vote of two-thirds of the outstanding Common Stock and two-thirds of the outstanding Preferred Stock of the Company, each voting as a class, is required for approval of the proposed merger. Accordingly, if you are unable to attend the meeting please sign and date the accompanying proxy and mail it promptly in the enclosed envelope.

J. I. CASE COMPANY

PROXY STATEMENT

This statement is furnished in connection with the solicitation by the management of J. I. Case Company ("Case") of proxies to be voted at the special meeting of stockholders scheduled to be held November 15, 1956. The Board of Directors of Case has fixed October 16, 1956 as the record date for the determination of the stockholders of Case entitled to notice of and to vote at the special meeting. The matters to be considered and acted upon at such meeting are the merger of American Tractor Corporation ("ATC") into Case and amendment of the Case Stock Option Plan. A person giving a proxy has the power to revoke it at any time prior to the exercise thereof.

I. Proposed Merger of American Tractor Corporation into J. I. Case Company

The Boards of Directors of Case and ATC have approved a plan of merger of ATC into Case, with the latter to be the surviving corporation. The plan of merger is summarized herein and is set forth in the Articles of Merger and Certificate of Consolidation, annexed hereto as Exhibit A, which provide for the merger under the laws of Wisconsin and the consolidation under the laws of New York (hereinafter called "merger") of ATC, a New York corporation, into and with Case, a Wisconsin corporation. Your Board recommends approval of such merger. The reasons which have motivated your Board in making such recommendation as being in the best interests of the stockholders of Case are set forth in the accompanying letter from John T. Brown, Chairman of the Board and President of Case.

Capital Stock of Case and ATC

The capitalization of Case and ATC is set forth below. Case has two classes of authorized stock as follows:

(a) 4,000,000 shares of Common Stock, par value $12.50 a share, of which 2,262,766 shares were outstanding as of October 1, 1956. As of such date 26,400 shares of authorized Common Stock were reserved against outstanding stock options.

(b) 101,825 shares of 7% Cumulative Preferred Stock, par value $100 a share, of which 92,906 shares were outstanding as of October 1, 1956.

[fol. 33]

ATC has two classes of authorized stock as follows:

(a) 2,000,000 shares of Common Stock, par value 25¢ a share, of which 1,108,944 shares were outstanding as of October 1, 1956. As of such date 9,547 shares of authorized Common Stock were reserved against outstanding stock options; 137,500 shares against conversions of Convertible Preferred Stock; and 180,000 shares against exercise of outstanding stock purchase warrants. In addition 2,000 shares of Common Stock were issued on October 12, 1956 to Mr. David Milligan, Vice President in Charge of Sales of ATC, pursuant to his employment contract with ATC.

(b) 250,000 shares of Convertible Preferred Stock, par value $20 a share, of which the following shares were outstanding as of October 1, 1956: 12,500 shares of Con-

This statement is furnished in connection with the solicitation by the management of J. I. Case Company ("Case") of proxies to be voted at the special meeting of stockholders scheduled to be held November 15, 1956. The Board of Directors of Case has fixed October 16, 1956 as the record date for the determination of the stockholders of Case entitled to notice of and to vote at the special meeting. The matters to be considered and acted upon at such meeting are the merger of American Tractor Corporation ("ATC") into Case and amendment of the Case Stock Option Plan. A person giving a proxy has the power to revoke it at any time prior to the exercise thereof.

I. Proposed Merger of American Tractor Corporation into J. I. Case Company

The Boards of Directors of Case and ATC have approved a plan of merger of ATC into Case, with the latter to be the surviving corporation. The plan of merger is summarized herein and is set forth in the Articles of Merger and Certificate of Consolidation, annexed hereto as Exhibit A, which provide for the merger under the laws of Wisconsin and the consolidation under the laws of New York (hereinafter called "merger") of ATC, a New York corporation, into and with Case, a Wisconsin corporation. Your Board recommends approval of such merger. The reasons which have motivated your Board in making such recommendation as being in the best interests of the stockholders of Case are set forth in the accompanying letter from John T. Brown, Chairman of the Board and President of Case.

Capital Stock of Case and ATC

The capitalization of Case and ATC is set forth below. Case has two classes of authorized stock as follows:

(a) 4,000,000 shares of Common Stock, par value $12.50 a share, of which 2,262,766 shares were outstanding as of October 1, 1956. As of such date 26,400 shares of authorized Common Stock were reserved against outstanding stock options.

(b) 101,825 shares of 7% Cumulative Preferred Stock, par value $100 a share, of which 92,906 shares were outstanding as of October 1, 1956.

[fol. 33]

ATC has two classes of authorized stock as follows:

(a) 2,000,000 shares of Common Stock, par value 25¢ a share, of which 1,108,944 shares were outstanding as of October 1, 1956. As of such date 9,547 shares of authorized Common Stock were reserved against outstanding stock options; 137,500 shares against conversions of Convertible Preferred Stock; and 180,000 shares against exercise of outstanding stock purchase warrants. In addition 2,000 shares of Common Stock were issued on October 12, 1956 to Mr. David Milligan, Vice President in Charge of Sales of ATC, pursuant to his employment contract with ATC.

(b) 250,000 shares of Convertible Preferred Stock, par value $20 a share, of which the following shares were outstanding as of October 1, 1956: 12,500 shares of Convertible Preferred Stock, Series 55-1; 50,000 shares of Convertible Preferred Stock, Series

56-1; and 50,000 shares of Convertible Preferred Stock, Series 56-2. Shares of Convertible Preferred Stock are convertible into shares of Common Stock at a price of $20 per share of Common Stock in the case of Series 55-1 and at a price of $16 per share of Common Stock in the case of Series 56-1 and 56-2.

Plan of Merger

Stock Conversion on Proposed Merger

Under the plan of merger the authorized capital stock of Case will remain the same except for the authorization of 1,300,000 shares of 6½% Second Cumulative Preferred Stock, par value $7 a share. Each share of Common Stock of ATC will be converted into (i) one-half share of Common Stock of Case and (ii) one share of new 6½% Second Cumulative Preferred Stock of Case. Shares of Common Stock and 7% Cumulative Preferred Stock of Case outstanding on the effective date of the merger will not be affected as a result of the merger and will remain outstanding as shares of Case, the surviving corporation. As indicated below, all shares of ATC Convertible Preferred Stock not converted prior to the merger will be redeemed by ATC prior to the merger's effectiveness.

Purchase of ATC Convertible Preferred Stock and Stock Purchase Warrants by Case

On September 24, 1956 Case purchased 50,000 shares of ATC Convertible Preferred Stock, Series 56-2 at a price of $20 a share, or an aggregate of $1,000,000. In the event the merger is consummated, such ATC shares will be redeemed prior to the effective date of the merger. Case also purchased for $500 on such date stock purchase warrants entitling the holder to purchase an aggregate of 90,000 shares of ATC Common Stock at $16 a share until September 24, 1959. If the merger is consummated, such warrants will terminate on the effective date of the merger. Such shares and warrants were purchased by Case to provide ATC with working capital pending the effectiveness or abandonment of the merger. Case has agreed not to sell or otherwise dispose of such shares or warrants prior to such effectiveness or abandonment.

Redemption of ATC Convertible Preferred Stock in Event of Merger

The plan of merger provides that prior to its effectiveness all outstanding shares of Convertible Preferred Stock of ATC (including the 50,000 shares of Convertible Preferred Stock, Series 56-2 held by Case) will be redeemed at a price of $21 a share. Case has agreed that in the event the merger is approved by stockholders and is not abandoned (see the caption "Abandonment of the Merger" herein) it will, before the effectiveness of the merger, provide sufficient funds to enable ATC to redeem all its ATC Convertible Preferred Stock then outstanding. Based on the assumption that 112,500 shares of ATC Convertible Preferred Stock remain outstanding, Case would be required to provide $2,362,500 for such redemption, of which Case would receive $1,050,000 on the redemption of the 50,000 shares of ATC Convertible Preferred Stock, Series 56-2 held by Case.

Options and Warrants to Purchase ATC Common Stock

As of October 1, 1956 there were outstanding options to purchase an aggregate of 9,547 shares of Common Stock of ATC. To the extent not exercised such options will terminate upon effectiveness of the merger.

As of October 1, 1956 there were also outstanding stock purchase warrants to purchase an aggregate of 180,000 shares of Common Stock of ATC (including the warrants to purchase

Plan of Merger

Stock Conversion on Proposed Merger

Under the plan of merger the authorized capital stock of Case will remain the same except for the authorization of 1,300,000 shares of 6½% Second Cumulative Preferred Stock, par value $7 a share. Each share of Common Stock of ATC will be converted into (i) one-half share of Common Stock of Case and (ii) one share of new 6½% Second Cumulative Preferred Stock of Case. Shares of Common Stock and 7% Cumulative Preferred Stock of Case outstanding on the effective date of the merger will not be affected as a result of the merger and will remain outstanding as shares of Case, the surviving corporation. As indicated below, all shares of ATC Convertible Preferred Stock not converted prior to the merger will be redeemed by ATC prior to the merger's effectiveness.

Purchase of ATC Convertible Preferred Stock and Stock Purchase Warrants by Case

On September 24, 1956 Case purchased 50,000 shares of ATC Convertible Preferred Stock, Series 56-2 at a price of $20 a share, or an aggregate of $1,000,000. In the event the merger is consummated, such ATC shares will be redeemed prior to the effective date of the merger. Case also purchased for $500 on such date stock purchase warrants entitling the holder to purchase an aggregate of 90,000 shares of ATC Common Stock at $16 a share until September 24, 1959. If the merger is consummated, such warrants will terminate on the effective date of the merger. Such shares and warrants were purchased by Case to provide ATC with working capital pending the effectiveness or abandonment of the merger. Case has agreed not to sell or otherwise dispose of such shares or warrants prior to such effectiveness or abandonment.

Redemption of ATC Convertible Preferred Stock in Event of Merger

The plan of merger provides that prior to its effectiveness all outstanding shares of Convertible Preferred Stock of ATC (including the 50,000 shares of Convertible Preferred Stock, Series 56-2 held by Case) will be redeemed at a price of $21 a share. Case has agreed that in the event the merger is approved by stockholders and is not abandoned (see the caption "Abandonment of the Merger" herein) it will, before the effectiveness of the merger, provide sufficient funds to enable ATC to redeem all its ATC Convertible Preferred Stock then outstanding. Based on the assumption that 112,500 shares of ATC Convertible Preferred Stock remain outstanding, Case would be required to provide $2,362,500 for such redemption, of which Case would receive $1,050,000 on the redemption of the 50,000 shares of ATC Convertible Preferred Stock, Series 56-2 held by Case.

Options and Warrants to Purchase ATC Common Stock

As of October 1, 1956 there were outstanding options to purchase an aggregate of 9,547 shares of Common Stock of ATC. To the extent not exercised such options will terminate upon effectiveness of the merger.

As of October 1, 1956 there were also outstanding stock purchase warrants to purchase an aggregate of 180,000 shares of Common Stock of ATC (including the warrants to purchase 90,000 shares held by Case) at $16 per share. The warrants held by Case are exercisable up to September 24, 1959 and the balance are exercisable up to February 2, 1959. Under the terms of the plan of merger, the warrants held by Case will terminate on the effectiveness of the merger,

[fol. 34]

but holders of the remaining warrants to purchase 90,000 shares of ATC Common Stock shall be entitled to purchase up to February 2, 1959 at the price of $16 per share of ATC Common Stock the number of shares of Common Stock and 6½% Second Cumulative Preferred Stock of Case to which they would have been entitled had they exercised their warrants to purchase shares of ATC Common Stock and held such shares at the date of merger. No fractional shares of Case will be issued on exercise of such warrants, but in lieu thereof cash payments will be made or scrip issued as determined by the Board of Directors of Case.

Capitalization of ATC, Case and the Surviving Company

The following table shows as of July 31, 1956 the long-term debt and capital stock of ATC, of Case, and, pro forma, of Case as the surviving corporation as if the merger had been in effect. In addition to the shares shown below, 3,353 shares of Common Stock of ATC were issued after July 31, 1956 pursuant to employment contracts and the exercise of stock options. Additional shares of Common Stock of ATC may be issued before the effectiveness of the merger in the event of the exercise of outstanding ATC stock purchase warrants or stock options or the conversion of outstanding shares of ATC Convertible Preferred Stock, Series 55-1 and 56-1. Pursuant to the merger additional shares of 6½% Second Cumulative Preferred Stock and Common Stock of Case will be issued in respect of all shares of Common Stock of ATC issued after July 31, 1956.

		Case	
	ATC	Before Merger	After Merger
Long-Term Debt	$ 801,000	$25,000,000	$25,801,000
Capital Stocks			
ATC			
Convertible Preferred Stock ($20 par value)			
Series 55-1	$ 250,000 (12,500 shs.)	—	—
Series 56-1	$1,000,000 (50,000 shs.)	—	—
Series 56-2(1)	—	—	—
Common Stock (25¢ par value)	$ 276,926 (1,107,704 shs.)	—	—
Case			
7% Cumulative Preferred Stock ($100 par value)	—	$ 9,290,600 (92,906 shs.)	$ 9,290,600 (92,906 shs.)
6½% Second Cumulative Preferred Stock ($7 par value)	—	—	$ 7,753,928 (1,107,704 shs.)
Common Stock ($12.50 par value)	—	$28,284,575 (2,262,766 shs.)	$35,207,725 (2,816,618 shs.)

[fol. 35]

Capitalization of ATC, Case and the Surviving Company

The following table shows as of July 31, 1956 the long-term debt and capital stock of ATC, of Case, and, pro forma, of Case as the surviving corporation as if the merger had been in effect. In addition to the shares shown below, 3,353 shares of Common Stock of ATC were issued after July 31, 1956 pursuant to employment contracts and the exercise of stock options. Additional shares of Common Stock of ATC may be issued before the effectiveness of the merger in the event of the exercise of outstanding ATC stock purchase warrants or stock options or the conversion of outstanding shares of ATC Convertible Preferred Stock, Series 55-1 and 56-1. Pursuant to the merger additional shares of 6½% Second Cumulative Preferred Stock and Common Stock of Case will be issued in respect of all shares of Common Stock of ATC issued after July 31, 1956.

		Case	
	ATC	Before Merger	After Merger
Long-Term Debt	$ 801,000	$25,000,000	$25,801,000
Capital Stocks			
ATC			
Convertible Preferred Stock ($20 par value)			
Series 55-1	$ 250,000 (12,500 shs.)	—	—
Series 56-1	$1,000,000 (50,000 shs.)	—	—
Series 56-2(1)	—	—	—
Common Stock (25¢ par value)	$ 276,926 (1,107,704 shs.)	—	—
Case			
7% Cumulative Preferred Stock ($100 par value)	—	$ 9,290,600 (92,906 shs.)	$ 9,290,600 (92,906 shs.)
6½% Second Cumulative Preferred Stock ($7 par value)	—	—	$ 7,753,928 (1,107,704 shs.)
Common Stock ($12.50 par value)	—	$28,284,575 (2,262,766 shs.)	$35,207,725 (2,816,618 shs.)

(1) On September 24, 1956, Case purchased 50,000 shares of Convertible Preferred Stock, Series 56-2 of ATC. If the merger is consummated, these shares, as well as any shares of the other Series of Convertible Preferred Stock of ATC not converted prior to the merger, will be redeemed prior to the merger's effectiveness.

[fol. 35]

Stockholder Vote Required for the Merger

Adoption of the merger requires the favorable vote of two-thirds of the outstanding shares of Common Stock and two-thirds of the outstanding shares of 7% Cumulative Preferred Stock of Case, each voting as a class. The proposed merger must also be approved by the favorable vote of two-thirds of the outstanding shares of Common Stock of ATC. In view of the proposed redemption of ATC Convertible Preferred Stock pursuant to the plan of merger, holders thereof are not entitled under the provisions of the certificate of incorporation of ATC to vote on the merger.

Effectiveness of Merger and Exchange of Certificates

The merger will become effective upon the filing and recording of the Articles of Merger and Certificate of Consolidation with the proper authorities in the States of Wisconsin and New York. Holders of certificates for Common Stock of ATC may thereafter exchange such certificates for certificates representing the appropriate number of whole shares of Common Stock and 6½% Second Cumulative Preferred Stock of Case. Dividends payable on shares of capital stock of Case which are represented by certificates of Common Stock of ATC will be paid only upon the surrender of such certificates for exchange.

Fractional Shares

No half shares of Common Stock of Case will be issued pursuant to the merger, but in lieu thereof Case at its election will either (a) pay $7.00 in cash or (b) deliver non-voting and non-dividend bearing scrip certificates (exchangeable within such period as may be fixed by the Board of Directors, upon surrender thereof with other scrip certificates aggregating one or more full shares, for the number of full shares represented).

Stock Exchange Listing

The Common Stock and the 7% Cumulative Preferred Stock of Case are listed on the New York Stock Exchange and the Common Stock of ATC is listed on the American Stock Exchange. Application will be made to list on the New York Stock Exchange, subject to the merger becoming effective, all shares of 6½% Second Cumulative Preferred Stock and Common Stock of Case to be issued upon the merger. The listing on the American Stock Exchange of the Common Stock of ATC will be discontinued upon the merger becoming effective.

Comparative Financial and Accounting Information

Summaries of Sales and Earnings

The following summary of sales and earnings of J. I. Case Company, insofar as it relates to the ten years ended October 31, 1955, has been examined by Price Waterhouse & Co., independent public accountants, whose opinion thereon appears elsewhere in this proxy statement; and the following summary of sales and earnings of American Tractor Corporation insofar as it relates to the five fiscal periods from January 1, 1951 to August 31, 1955 has been examined by Detmer, Lipp & Company, independent public accountants, whose opinion thereon appears elsewhere in this proxy statement. The information set forth as to Case for the nine months ended July 31, 1956 and July 31, 1955 and as to ATC for the eleven months ended July 31, 1956 has been prepared by the respective companies and has not been audited. Such information for the unaudited interim periods includes all adjustments known to the companies which are necessary for a fair statement of the results for such periods. The summaries, insofar as they relate to the three years and nine months ended July 31, 1956 for Case and the four fiscal periods and eleven months ended July 31, 1956 for ATC, should be read in conjunction with the financial statements and notes thereto included elsewhere in this proxy statement.

J. I. CASE COMPANY

Summary of Sales and Earnings

Fiscal Year Ended October 31	(000 Omitted) Net Sales	Gross Profit	Interest Expense	Provision for Federal, State and Foreign Taxes on Income	Net Earnings or (Loss)	Net Earnings or (Loss) Applicable to Common Stock	Per Share of Common Stock, Par Value $12.50 (1) Net Earnings or (Loss)	Dividends Paid
1946(2)	$ 35,488	$ 3,898	$ —	$(1,882)(3)	$ 1,483	$ 833	$ .54	$1.00
1947(2)	75,304	13,326	31	3,195	4,916	4,266	2.75	.80
1948	142,432	25,822	145	8,135	10,377	9,727	6.27	1.00
1949	156,007	38,598	109	12,400	17,607	16,957	9.93	1.00
1950	132,696	35,503	196	12,800(4)	15,136	14,486	8.48	2.525
1951	153,545	34,282	421	13,525	9,786(5)	9,136	4.86	2.50
1952	142,898	27,591	1,395	8,150	7,049	6,399	2.82	2.50
1953	104,463	14,549	1,700	850	781	131	.06	2.00
1954	87,112	11,380	1,514	(455)	(549)	(1,199)	(.53)	.50
1955	88,894	14,369	1,436	767	903	253(6)	.11	—
Nine months ended July 31, 1955 (unaudited)	68,009	9,433	1,104	28	25	(463)	(.20)	—
1956 (unaudited)	59,612	4,852	1,256	(700)	(3,703)	(4,191)	(1.85)	—

( ) Indicates negative figure.

NOTES:

(1) Based on shares of Common Stock outstanding at the end of the respective periods, adjusted to give effect to the 2 for 1 stock split on April 17, 1952 but without retroactive adjustment for 10% stock dividends paid in the fiscal years 1949 and 1951 respectively.

(2) Operations for the years 1946 and 1947 were adversely affected because of curtailment of production at Case's plants due to strikes.

(3) Comprises $1,900,000 estimated refund of prior years' federal taxes on income arising from carrybacks of

[fol. 37]

production in 1956 and its products transferred to other Case facilities. Case is presently terminating operations at the Anniston plant and intends to terminate operations at Stockton early in 1957 in order to consolidate production at the other locations. Case presently plans to dispose of the Anniston plant. Operations at the other Case plants have been reduced considerably below capacity. The Case foundries are at Racine, Rockford and Rock Island. The Rock Island foundry is presently not operating but is maintained in a standby condition. The executive offices are at Racine.

Market for Agricultural Machinery

A large unfilled demand for farm machinery was built up during World War II, when severe restrictions were placed on manufacturers and the demand was further stimulated during the Korean War period. This resulted in a higher than normal demand for farm machinery which continued well into 1952. Beginning in the latter part of 1952 industry production caught up with demand and all types of farm machinery became readily available. In 1953 and subsequent years there has been a substantial decline in farm income causing a reduction in the sale of farm machinery. Cash farm income from crops and livestock in the United States and Government benefit payments, together with farmers' net income as estimated and reported by the Department of Agriculture are shown in the following table for the years indicated:

	Cash Farm Income	Government Payments	Total	Farmers' Net Income
		(in millions)		
1950	$28,773	$283	$29,056	$12,344
1951	32,800	283	33,083	14,299
1952	32,373	275	32,648	14,319
1953	31,200	247	31,447	12,747
1954	30,200	247	30,447	12,500
1955	29,264	229	29,493	11,340
1956 (estimated)	29,849	537	30,386	11,750

[fol. 40]

Many areas in the United States and Canada where Case normally obtains a substantial volume of business have experienced drought and unfavorable crop conditions adversely affecting farm machinery sales since 1953.

Case's net sales dropped from approximately $153,000,000 in fiscal 1951 to approximately $87,000,000 in fiscal 1954. Production was reduced during this period by about 55%. Inventories were reduced by about 40% during the period of the fiscal years 1951 through 1955. Net sales for fiscal 1955 increased to slightly less than $89,000,000 and for the first nine months of fiscal 1956 net sales were slightly less than $60,000,000.

Distribution System

Case sells its products at wholesale through its own branches in the United States and Canada to about 3,400 farm machinery dealers in the agricultural areas of those countries. These dealers are independent business firms which purchase and sell Case farm machinery and parts, and also render the mechanical service required. Case has 29 sales branches in the United States

and the following summary of sales and earnings of American Tractor Corporation insofar as it relates to the five fiscal periods from January 1, 1951 to August 31, 1955 has been examined by Detmer, Lipp & Company, independent public accountants, whose opinion thereon appears elsewhere in this proxy statement. The information set forth as to Case for the nine months ended July 31, 1956 and July 31, 1955 and as to ATC for the eleven months ended July 31, 1956 has been prepared by the respective companies and has not been audited. Such information for the unaudited interim periods includes all adjustments known to the companies which are necessary for a fair statement of the results for such periods. The summaries, insofar as they relate to the three years and nine months ended July 31, 1956 for Case and the four fiscal periods and eleven months ended July 31, 1956 for ATC, should be read in conjunction with the financial statements and notes thereto included elsewhere in this proxy statement.

J. I. CASE COMPANY

Summary of Sales and Earnings

Fiscal Year Ended October 31	(000 Omitted) Net Sales	Gross Profit	Interest Expense	Provision for Federal, State and Foreign Taxes on Income	Net Earnings or (Loss)	Net Earnings or (Loss) Applicable to Common Stock	Per Share of Common Stock, Par Value $12.50 (1) Net Earnings or (Loss)	Dividends Paid
1946(2)	$ 35,488	$ 3,898	$ —	$(1,882)(3)	$ 1,483	$ 833	$ .54	$1.00
1947(2)	75,304	13,326	31	3,195	4,916	4,266	2.75	.80
1948	142,432	25,822	145	8,135	10,377	9,727	6.27	1.00
1949	156,007	38,598	109	12,400	17,607	16,957	9.93	1.00
1950	132,696	36,503	196	12,800(4)	15,136	14,486	8.48	2.525
1951	153,545	34,282	421	13,525	9,786(5)	9,136	4.86	2.50
1952	142,898	27,591	1,395	8,150	7,049	6,399	2.82	2.50
1953	104,463	14,549	1,700	850	781	131	.06	2.00
1954	87,112	11,380	1,514	(455)	(549)	(1,199)	(.53)	.50
1955	88,894	14,369	1,436	767	903	253(6)	.11	—
Nine months ended July 31, 1955 (unaudited)	68,009	9,433	1,104	28	25	(463)	(.20)	—
1956 (unaudited)	59,612	4,852	1,256	(700)	(3,703)	(4,191)	(1.85)	—

( ) Indicates negative figure.

NOTES:

(1) Based on shares of Common Stock outstanding at the end of the respective periods, adjusted to give effect to the 2 for 1 stock split on April 17, 1952 but without retroactive adjustment for 10% stock dividends paid in the fiscal years 1949 and 1951 respectively.

(2) Operations for the years 1946 and 1947 were adversely affected because of curtailment of production at Case's plants due to strikes.

(3) Comprises $1,900,000 estimated refund of prior years' federal taxes on income arising from carry-backs of operating loss for fiscal year and unused excess profits tax credit, less $18,000 foreign income taxes.

(4) Includes $800,000 provision for federal excess profits tax.

(5) As at November 1, 1950, Case changed its method of valuing its inventories from average cost or market, whichever lower, to cost determined on the basis of "last-in, first-out". The net earnings for 1951 are approximately $1,250,000 less than if they had been reported on the old basis.

(6) Does not include $162,586 preferred dividend declared in 1955 representing dividend for first quarter 1956.

[fol. 37]

See the heading "Market for Agricultural Machinery" under the caption "Business of Case" as to reasons for the losses in the fiscal years 1954 and 1956 and the decline in sales in recent years.

If the merger with ATC is consummated the dividend requirements on the new 6½% Second Cumulative Preferred Stock issuable on the effectiveness of the merger, based on the number of shares of Common Stock of ATC outstanding on July 31, 1956, will be $504,005 per annum. This amount will be increased to the extent that additional shares of 6½% Second Cumulative Preferred Stock are issued pursuant to the merger. In addition there will be further charges against earnings of (1) an amount, presently undeterminable, for amortization of excess of cost of assets acquired over assigned value thereof, as explained in note 5 on page 40, and (2) depreciation of approximately $80,000 per year on the increased carrying value of property, plant and equipment of ATC.

AMERICAN TRACTOR CORPORATION

Summary of Sales and Earnings

Fiscal Period	(000 Omitted) Net Sales	Gross Profit	Interest Expense	Provision for Federal Taxes on Income	Net Earnings or (Loss)	Net Earnings or (Loss) Applicable to Common Stock	Per Share of Common Stock par Value 25¢ (3) Net Earnings or (Loss)	Dividends Paid
Year ended December 31,								
1951	$3,119	$ 300	$ 18	$ 25	$ 26	$ 26	$ .03	—
1952	3,456	279	24	(25)(1)	(40)	(41)	(.05)	—
Eight months ended August 31,								
1953	1,702	157	15	—	(89)	(89)	(.09)	—
Year ended August 31,								
1954	2,264	270	32	—	(167)	(167)	(.16)	—
1955	5,280	1,101	62	69(2)	347	347	.32	—
Eleven months ended July 31,								
1956 (unaudited)	9,177	1,735	121	331	306	280	.25	—

( ) Indicates negative figure.

NOTES:

(1) Refund of prior year's federal taxes on income arising from carry-back of operating loss for year.

(2) The federal tax provision for the year ended August 31, 1955 is $127,610 less than the tax normally applicable to net income for that year due to a net operating loss carry-over from prior periods.

(3) Based on shares of Common Stock outstanding at the end of the respective periods, adjusted to give effect to 1,000 for 1 stock split in 1952 and 2 for 1 stock split in 1955, and after provision for preferred stock dividends paid.

Market Prices for Stocks of Case and ATC

The high and low sales prices (as reported by the Commercial and Financial Chronicle) of the Common Stock of Case on the New York Stock Exchange since January 1, 1946 and of the Common Stock of ATC on the American Stock Exchange following its listing on January 17, 1955 are set forth below.

	Case[1]		ATC[2]	
	High	Low	High	Low
1946	27½	15¾		
1947	23½	14¾		
1948	26¼	17 9/16		
1949	22¾	15		
1950	28 7/16	17 11/16		
1951	39⅜	26		
1952	36½	22		
1953	25	14½		
1954 First Quarter	17⅛	14⅞		
Second Quarter	17¾	13⅞		
Third Quarter	16⅝	14½		
Fourth Quarter	19¾	14½		
1955 First Quarter	19⅜	15½	9⅝	6
Second Quarter	18⅜	16¼	15	9½
Third Quarter	18¼	15½	14⅝	12¾
Fourth Quarter	19½	13⅝	17⅞	13
1956 First Quarter	18½	14½	16¼	13⅜
Second Quarter	15⅜	11½	14¾	13½
Third Quarter	15⅝	11⅝	15	12⅛

(1) Adjusted to give effect to the 2-for-1 split of Case Common Stock on April 17, 1952 but without retroactive adjustment for 10% stock dividends in the fiscal years 1949 and 1951 respectively.

(2) Adjusted to give effect to the 2-for-1 split of ATC Common Stock on August 18, 1955.

[Fol. 39]

There are no available quotations of the ATC Common Stock on the over-the-counter market prior to the third quarter of 1954. The low bid and high offer for such stock (as reported by The National Quotation Bureau Incorporated) during the third quarter of 1954 were 1½ and 2⅞, respectively, and for the fourth quarter of 1954 were 3½ and 6⅜, respectively.

On October 15, 1956 the closing price for Common Stock of Case on the New York Stock Exchange was 13⅝ per share and the closing price for Common Stock of ATC on the American Stock Exchange was 11⅞ per share.

Business of Case

General

Case, incorporated under the laws of Wisconsin in 1920 as J. I. Case Threshing Machine

	Case[1]		ATC[2]	
	High	Low	High	Low
1946	27½	15¾		
1947	23½	14¾		
1948	26¼	17 9/16		
1949	22¾	15		
1950	28 7/16	17 11/16		
1951	39⅜	26		
1952	36½	22		
1953	25	14½		
1954 First Quarter	17⅛	14⅞		
Second Quarter	17¾	13⅞		
Third Quarter	16⅝	14½		
Fourth Quarter	19¾	14½		
1955 First Quarter	19⅜	15½	9⅝	6
Second Quarter	18⅜	16¼	15	9½
Third Quarter	18¼	15½	14⅝	12¾
Fourth Quarter	19½	13⅝	17⅞	13
1956 First Quarter	18½	14½	16¼	13⅜
Second Quarter	15⅜	11½	14¾	13½
Third Quarter	15⅝	11⅝	15	12⅛

(1) Adjusted to give effect to the 2-for-1 split of Case Common Stock on April 17, 1952 but without retroactive adjustment for 10% stock dividends in the fiscal years 1949 and 1951 respectively.

(2) Adjusted to give effect to the 2-for-1 split of ATC Common Stock on August 18, 1955.

[fol. 39]

There are no available quotations of the ATC Common Stock on the over-the-counter market prior to the third quarter of 1954. The low bid and high offer for such stock (as reported by The National Quotation Bureau Incorporated) during the third quarter of 1954 were 1½ and 2⅞, respectively, and for the fourth quarter of 1954 were 3½ and 6⅜, respectively.

On October 15, 1956 the closing price for Common Stock of Case on the New York Stock Exchange was 13⅝ per share and the closing price for Common Stock of ATC on the American Stock Exchange was 11⅞ per share.

Business of Case

General

Case, incorporated under the laws of Wisconsin in 1880 as J. I. Case Threshing Machine Company, is the successor to the farm machinery business established by Jerome I. Case in 1842. Its corporate title was changed in 1929 to J. I. Case Company.

Case is a full-line producer of farm machinery, including tractors and all of the equipment generally used in plowing, tilling, fertilizing, planting and seeding, cultivating, making hay

and silage and harvesting grains, seeds, corn and many other crops. In addition, wheel tractors and power engine units are produced and sold for non-farm use.

Case has 7 plants and 3 foundries in the United States. Plants are located at Racine, Wisconsin, at Rockford and Rock Island, Ill., at Bettendorf and Burlington, Iowa, at Anniston, Ala., and at Stockton, Calif. One plant formerly operated at Racine was substantially taken out of production in 1956 and its products transferred to other Case facilities. Case is presently terminating operations at the Anniston plant and intends to terminate operations at Stockton early in 1957 in order to consolidate production at the other locations. Case presently plans to dispose of the Anniston plant. Operations at the other Case plants have been reduced considerably below capacity. The Case foundries are at Racine, Rockford and Rock Island. The Rock Island foundry is presently not operating but is maintained in a standby condition. The executive offices are at Racine.

Market for Agricultural Machinery

A large unfilled demand for farm machinery was built up during World War II, when severe restrictions were placed on manufacturers and the demand was further stimulated during the Korean War period. This resulted in a higher than normal demand for farm machinery which continued well into 1952. Beginning in the latter part of 1952 industry production caught up with demand and all types of farm machinery became readily available. In 1953 and subsequent years there has been a substantial decline in farm income causing a reduction in the sale of farm machinery. Cash farm income from crops and livestock in the United States and Government benefit payments, together with farmers' net income as estimated and reported by the Department of Agriculture are shown in the following table for the years indicated:

	Cash Farm Income	Government Payments	Total	Farmers' Net Income
		(in millions)		
1950	$28,773	$283	$29,056	$12,344
1951	32,800	283	33,083	14,299
1952	32,373	275	32,648	14,319
1953	31,200	247	31,447	12,747
1954	30,200	247	30,447	12,500
1955	29,264	229	29,493	11,340
1956 (estimated)	29,849	537	30,386	11,750

Many areas in the United States and Canada where Case normally obtains a substantial volume of business have experienced drought and unfavorable crop conditions adversely affecting farm machinery sales since 1953.

Case's net sales dropped from approximately $153,000,000 in fiscal 1951 to approximately $87,000,000 in fiscal 1954. Production was reduced during this period by about 55%. Inventories were reduced by about 40% during the period of the fiscal years 1951 through 1955. Net sales for fiscal 1955 increased to slightly less than $89,000,000 and for the first nine months of fiscal 1956 net sales were slightly less than $60,000,000.

Distribution System

Case sells its products at wholesale through its own branches in the United States and Canada

and 8 in Canada. Orders are submitted to the branches, which generally place them with the Case plants for direct shipment to the dealers, although the branches have warehouse facilities and maintain sufficient stocks of machinery and replacement parts for prompt shipment when required. Tractors and engine units for other than farm use are sold and serviced through a separate dealer organization which has sales representatives at principal points in the United States and Canada.

Case's export sales, outside of Canada, are handled both by direct sales to dealers in 65 countries and through 5 branches located in the Argentine, Uruguay and Brazil. During the past five years such export sales have accounted for between about 10% and 16% of Case's total sales and currently amount to about 10% of such total sales.

Subject to reasonable credit limitations, most sales to dealers are handled on the basis of payment due on varying dates, depending on the type of machinery sold, and with cash discounts for prepayment. It is Case's general policy to retain security title to or lien upon new goods in dealers' hands until payment is made therefor. Many dealers arrange for the wholesale financing of their purchases either through their local banks or other agencies, thus enabling them to take advantage of the cash discounts. Upon the dealer's sale of a machine, his obligation to Case becomes immediately due and payable, even though prior to the scheduled payment date. The total amount of receivables from dealers has increased steadily during the last five years. In addition Case finances dealers' retail sales by accepting farmers' receivables therefor.

Products

It has been Case's policy for many years to make quality products, and it has attained a high reputation in this regard. During the past five years Case has intensified its program of engineering and new product development.

New and improved machines have been included in the Case lines which have contributed to agricultural mechanization. These include the Case four-plow tractor, series "400", the new three-plow tractor, series "300", both available with gasoline, distillate, liquid petroleum gasoline and diesel power units, together with the related implements used by these tractors. In addition Case has introduced a self-propelled and pull-type combine, new light and heavy duty automatic tying hay balers using both wire and twine, new lister type press drills, a complete new line of manure spreaders, a heavy duty farm wagon, a new two-row mounted corn picker, an improved line of forage harvesters, the "A" series heavy duty moldboard plow, the "S" series wheel harrow, two-way reversible mounted moldboard and disk plows, the "M" series mowers, a new line of offset disk harrows, rotary cutters and the Model 88 tobacco harvester.

Included in Case's full line of agricultural machinery are wheel tractors and related implements, threshers, combines, planters and listers, cultivators, plows, harrows, grain drills, hay machinery (including mowers, rakes and balers), forage harvesters, corn pickers, hammer feed mills, manure spreaders, farm wagons, portable elevators, stalk shredders, cotton strippers, tobacco harvesters and sub-soilers. Many of these products are produced in various types, sizes and models. The individual machines in the order of their importance in dollar volume of Case's sales are wheel tractors, implements (both tractor drawn and mounted), combines, hay balers, forage harvesters and corn pickers. Case also manufactures and markets parts for the servicing and repair of its products.

Competition

organization which has sales representatives at principal points in the United States and Canada.

Case's export sales, outside of Canada, are handled both by direct sales to dealers in 65 countries and through 5 branches located in the Argentine, Uruguay and Brazil. During the past five years such export sales have accounted for between about 10% and 16% of Case's total sales and currently amount to about 10% of such total sales

Subject to reasonable credit limitations, most sales to dealers are handled on the basis of payment due on varying dates, depending on the type of machinery sold, and with cash discounts for prepayment. It is Case's general policy to retain security title to or lien upon new goods in dealers' hands until payment is made therefor. Many dealers arrange for the wholesale financing of their purchases either through their local banks or other agencies, thus enabling them to take advantage of the cash discounts. Upon the dealer's sale of a machine, his obligation to Case becomes immediately due and payable, even though prior to the scheduled payment date. The total amount of receivables from dealers has increased steadily during the last five years. In addition Case finances dealers' retail sales by accepting farmers' receivables therefor.

Products

It has been Case's policy for many years to make quality products, and it has attained a high reputation in this regard. During the past five years Case has intensified its program of engineering and new product development.

New and improved machines have been included in the Case lines which have contributed to agricultural mechanization. These include the Case four-plow tractor, series "400", the new three-plow tractor, series "300", both available with gasoline, distillate, liquid petroleum gasoline and diesel power units, together with the related implements used by these tractors. In addition Case has introduced a self-propelled and pull-type combine, new light and heavy duty automatic tying hay balers using both wire and twine, new lister type press drills, a complete new line of manure spreaders, a heavy duty farm wagon, a new two-row mounted corn picker, an improved line of forage harvesters, the "A" series heavy duty moldboard plow, the "S" series wheel harrow, two-way reversible mounted moldboard and disk plows, the "M" series mowers, a new line of offset disk harrows, rotary cutters and the Model 88 tobacco harvester.

Included in Case's full line of agricultural machinery are wheel tractors and related implements, threshers, combines, planters and listers, cultivators, plows, harrows, grain drills, hay machinery (including mowers, rakes and balers), forage harvesters, corn pickers, hammer feed mills, manure spreaders, farm wagons, portable elevators, stalk shredders, cotton strippers, tobacco harvesters and sub-soilers. Many of these products are produced in various types, sizes and models. The individual machines in the order of their importance in dollar volume of Case's sales are wheel tractors, implements (both tractor drawn and mounted), combines, hay balers, forage harvesters and corn pickers. Case also manufactures and markets parts for the servicing and repair of its products.

Competition

The farm machinery industry is highly competitive. A total of 1,240 manufacturers reported to the United States Bureau of the Census in 1954. There are eight companies, including Case, commonly referred to as full-line manufacturers, which means they make and sell a relatively complete line of farm machinery and equipment. Accurate figures on the sales of farm machinery

[fol. 41]

by all of the eight full-line manufacturers are not available. However, Case believes its relative position is either fifth or sixth among such full-line manufacturers. The sales of each of the two largest full-line manufacturers are substantially larger than those of any other manufacturer, including Case. Besides the full-line companies, there are a great many short-line companies which manufacture and sell certain kinds of farm equipment and successfully compete with the full-line manufacturers on the machines they produce.

Materials and Supplies

Steel, pig iron, cast iron and steel scrap are the most important raw materials used by Case. Case produces or fabricates most of the parts entering into the manufacture of its products, the principal items it purchases from others being tires and tubes, rubber belts, tractor radiators, rims, bearings, chain, electrical equipment such as ammeters, speedometers, batteries and wiring equipment, disk blades for plows and harrows, and a portion of its engine requirements for balers, combines and forage harvesters. Case's sources for its materials and parts are competitive, and it is not limited to any one particular source for any materials or parts used in the manufacture of its products.

Case produces in its own foundries practically all of its requirements of grey iron castings, which are a major item in its operations. Case also makes substantially all of the engine requirements for its tractors and has produced at its Rock Island and Racine tractor plants a substantial part of the engine requirements for the larger models of combines and hay balers.

Employee Relations

As of October 1, 1956 Case had approximately 3,500 employees at its various plants, exclusive of supervisory and salaried personnel. Most of the production and maintenance employees are represented by the UAW-AFL-CIO with most of the remaining employees being represented by various craft unions.

The union contract at the Stockton, California, plant expired in May 1956 with no new agreement having been reached. Under Case's present plans operations at Stockton will terminate in early 1957. Negotiations are currently in progress with the union at the Rock Island plant under a wage reopening clause of the union contract. The union contracts at Case's plants expire on various dates, the earliest of which is January 1957, and contain in certain cases provisions for earlier reopening with respect to wages.

During the fiscal year 1956, Case put into effect hourly wage adjustments totaling approximately $1,525,000 a year, of which approximately $829,000 is reflected in the figures for the operations of Case for the nine months ended July 31, 1956.

[fol. 42]

Manufacturing Facilities

Case's manufacturing operations are carried out at seven plants as follows:

Plant	Principal Products
Racine, Wisconsin, Plant	Two sizes of tractors in various models and balers.
Rockford, Illinois, Plant	Plows, harrows, cultivators, planters, mowers, stalk shredders, and rakes and spreaders.
Rock Island, Illinois, Plant	Tractors, farm wagons and hammer feed mills.
Burlington, Iowa, Plant	Combines and grain elevators.

Materials and Supplies

Steel, pig iron, cast iron and steel scrap are the most important raw materials used by Case. Case produces or fabricates most of the parts entering into the manufacture of its products, the principal items it purchases from others being tires and tubes, rubber belts, tractor radiators, rims, bearings, chain, electrical equipment such as ammeters, speedometers, batteries and wiring equipment, disk blades for plows and harrows, and a portion of its engine requirements for balers, combines and forage harvesters. Case's sources for its materials and parts are competitive, and it is not limited to any one particular source for any materials or parts used in the manufacture of its products.

Case produces in its own foundries practically all of its requirements of grey iron castings, which are a major item in its operations. Case also makes substantially all of the engine requirements for its tractors and has produced at its Rock Island and Racine tractor plants a substantial part of the engine requirements for the larger models of combines and hay balers.

Employee Relations

As of October 1, 1956 Case had approximately 3,500 employees at its various plants, exclusive of supervisory and salaried personnel. Most of the production and maintenance employees are represented by the UAW-AFL-CIO with most of the remaining employees being represented by various craft unions.

The union contract at the Stockton, California, plant expired in May 1956 with no new agreement having been reached. Under Case's present plans operations at Stockton will terminate in early 1957. Negotiations are currently in progress with the union at the Rock Island plant under a wage reopening clause of the union contract. The union contracts at Case's plants expire on various dates, the earliest of which is January 1957, and contain in certain cases provisions for earlier reopening with respect to wages.

During the fiscal year 1956, Case put into effect hourly wage adjustments totaling approximately $1,525,000 a year, of which approximately $829,000 is reflected in the figures for the operations of Case for the nine months ended July 31, 1956.

Manufacturing Facilities

Case's manufacturing operations are carried out at seven plants as follows:

Plant	Principal Products
Racine, Wisconsin, Plant	Two sizes of tractors in various models and balers.
Rockford, Illinois, Plant	Plows, harrows, cultivators, planters, mowers, stalk shredders, and rakes and spreaders.
Rock Island, Illinois, Plant	Tractors, farm wagons and hammer feed mills.
Burlington, Iowa, Plant	Combines and grain elevators.
Bettendorf, Iowa, Plant	Combines, hay balers, forage harvesters, windrowers, and corn pickers and picker-shellers.
Stockton, California, Plant	Harrows, rakes, cultivators and tool bar implements especially designed for use in the Pacific Coast area.
Anniston, Alabama, Plant	Plows, cultivators, rakes, cane tools and tobacco harvesters.

[fol. 42]

Case's plants and physical facilities have been maintained in good condition and Case considers them adequate for their operations.

While production rates have varied between plants and between different seasons, Case estimates that during the current fiscal year the Case plants, taken in the aggregate, produced at an average rate of about 40% of capacity. As to the extent of operations at the various plants and plans for termination of operations at certain plants see the heading "General" under the caption "Business of Case".

Business of ATC

General

Case has been supplied with the information contained herein as to ATC by the management of ATC. ATC was founded in 1948 under the name Washington Tractor & Farm Equipment Corp. and changed its name in 1949 to American Tractor Corporation. Mr. Marc B. Rojtman, President of ATC, founded the company and has acted continuously as its President and principal executive officer.

In 1948 ATC commenced research and development work on a high clearance, lightweight, highly maneuverable crawler tractor. In 1950 ATC purchased from Federal Machine and Welder Company of Warren, Ohio, the manufacturer of the Ustrac crawler tractor, a substantial inventory of Ustrac and Clarkair tractor parts. In addition ATC acquired the use of all the engineering drawings, jigs, dies, fixtures and tooling of the Ustrac tractor at no additional cost to ATC. The Clarkair tractor, on which the Ustrac tractor was patterned, was originally developed by Clark Equipment Company of Battle Creek, Michigan, for United States airborne military requirements in World War II.

In 1950 ATC acquired a factory site at Churubusco, Indiana consisting of a frame building with a floor area of approximately 6,900 square feet. ATC engaged in a complete redesign program of the Ustrac tractor and by September 1950 introduced its first production model called the TerraTrac GT 25. This unit was 25 horsepower with application primarily in farming and light construction. This model is no longer in production. Beginning in 1951 ATC engaged in an extensive new product development and tooling program which by 1954 gave to ATC a line of five models of crawler tractors together with its own engineered and manufactured line of bulldozers, angledozers and other industrial and specialized equipment.

[fol. 43]

ATC's Products

The development program of ATC by the end of the 1956 fiscal year has resulted in an expanded product line consisting of five gasoline powered crawler tractors with horsepower ranging from 36½ to 62, three diesel powered crawler tractors with horsepower ranging from 37 up to 62, one 42.5 horsepower gasoline powered crawler fork lift, and two models of transport trailers together with a line of loaders ranging from one-half to one cubic yard capacity with bulldozers, angledozers, scarifiers and winches available for each of the separate models. In addition ATC designed and introduced in 1956 its own crawler-mounted backhoe, the only backhoe produced by any crawler tractor manufacturer specifically for use on its own tractors.

In 1956 ATC also introduced its own specially designed hydraulic "Terramatic" transmission which was incorporated in the 62 horsepower model 600 tractor. Although this model was enthusiastically received in the market, production was limited by the relatively short supply of Terramatic transmissions, with no such transmissions being delivered to ATC during the last half of June and the entire month of July 1956. Since August [illegible]

caption Business of Case .

Business of ATC

General

Case has been supplied with the information contained herein as to ATC by the management of ATC. ATC was founded in 1948 under the name Washington Tractor & Farm Equipment Corp. and changed its name in 1949 to American Tractor Corporation. Mr. Marc B. Rojtman, President of ATC, founded the company and has acted continuously as its President and principal executive officer.

In 1948 ATC commenced research and development work on a high clearance, lightweight, highly maneuverable crawler tractor. In 1950 ATC purchased from Federal Machine and Welder Company of Warren, Ohio, the manufacturer of the Ustrac crawler tractor, a substantial inventory of Ustrac and Clarkair tractor parts. In addition ATC acquired the use of all the engineering drawings, jigs, dies, fixtures and tooling of the Ustrac tractor at no additional cost to ATC. The Clarkair tractor, on which the Ustrac tractor was patterned, was originally developed by Clark Equipment Company of Battle Creek, Michigan, for United States airborne military requirements in World War II.

In 1950 ATC acquired a factory site at Churubusco, Indiana consisting of a frame building with a floor area of approximately 6,900 square feet. ATC engaged in a complete redesign program of the Ustrac tractor and by September 1950 introduced its first production model called the TerraTrac GT 25. This unit was 25 horsepower with application primarily in farming and light construction. This model is no longer in production. Beginning in 1951 ATC engaged in an extensive new product development and tooling program which by 1954 gave to ATC a line of five models of crawler tractors together with its own engineered and manufactured line of bulldozers, angledozers and other industrial and specialized equipment.

[fol. 43]

ATC's Products

The development program of ATC by the end of the 1956 fiscal year has resulted in an expanded product line consisting of five gasoline powered crawler tractors with horsepower ranging from 36½ to 62, three diesel powered crawler tractors with horsepower ranging from 37 up to 62, one 42.5 horsepower gasoline powered crawler fork lift, and two models of transport trailers together with a line of loaders ranging from one-half to one cubic yard capacity with bulldozers, angledozers, scarifiers and winches available for each of the separate models. In addition ATC designed and introduced in 1956 its own crawler-mounted backhoe, the only backhoe produced by any crawler tractor manufacturer specifically for use on its own tractors.

In 1956 ATC also introduced its own specially designed hydraulic "Terramatic" transmission which was incorporated in the 62 horsepower model 600 tractor. Although this model was enthusiastically received in the market, production was limited by the relatively short supply of Terramatic transmissions, with no such transmissions being delivered to ATC during the last half of June and the entire month of July, 1956. Since August 1, 1956, ATC has been able to obtain an improved supply of transmission units.

By December 1956 ATC's new 80 horsepower gasoline and diesel powered crawler tractors and its new 100 horsepower diesel tractor are scheduled to be released for sale. The company's additional models M-10 rear engine crawler tractor of 100 horsepower and its 120 horsepower

diesel power crawler tractor are scheduled to be released during March, 1957. With the introduction of these larger models ATC will present a fully integrated line of equipment including loaders from 1⅓ to 1¾ cubic yard capacity, hydraulic angledozers, bulldozers, scarifiers, winches and scrapers for heavy construction and road building work.

ATC will incorporate in its new higher horsepower tractors, beginning with the 80 horsepower model 800, a new feature, namely its specially designed counter-rotating hydraulic "Terramatic" transmission. This larger Terramatic transmission incorporates hydraulically operated automatic forward and reverse speeds, foot or manual controls, with faster reverse than forward speeds, and permits power turns and counter rotation.

Growth of ATC Sales and Earnings

Following the initial years the volume of ATC sales has rapidly increased. In each of the fiscal years 1955 and 1956 ATC's sales volume practically doubled that of the previous year, with sales being as follows: 1954—$2,264,236; 1955—$5,279,628; and 1956—$10,250,000 (unaudited).

During such years ATC earnings also increased notwithstanding the cost of an extensive engineering and development program, including the recent program resulting in the development of its larger horsepower models to be introduced in fiscal 1957. Operations in 1954 resulted in a net loss of $166,871. In the fiscal year 1955 net earnings before taxes amounted to $416,102 and after taxes to $346,781 and for the eleven months ended July 31, 1956 amounted to $637,621 before taxes and $306,211 after taxes (unaudited).

Markets and Applications for ATC Products

The markets and applications for ATC's products include housing and commercial construction such as shopping centers and industrial plants; road-building and heavy construction such as land leveling, grading, excavating and fill work on roads, building sites and land reclamation; municipality work such as sanitary landfill, sewer, pipe and water line installation and secondary road maintenance. Oil pipeline installation, logging, materials, handling in and around industrial plants, as well as specialized farming where rubber tired tractors are unsuitable, are among ATC's varied product applications. During 1956, ATC also completed, under contract with the U. S. Navy, production of a pilot model of electrically controlled crawler fork lift, with special hydraulic transmission, for shipboard materials handling. This unit is now undergoing tests by the Navy.

[fol. 44]

Distribution

In 1954 ATC had a distributor and dealer network composed of 43 outlets. By fiscal year-end 1956, ATC's domestic and foreign outlets had increased to 233. ATC's dealer and distributor organization includes agricultural and light construction machinery dealers located in rural areas and industrial and materials handling dealers located in cities and metropolitan areas. Included in ATC's distribution system are wholesale distributors who in turn sell and service retail dealers who sell ATC products and parts to end users and also render the mechanical service required. Starting with only 10 such wholesale distributors in 1954, by the end of fiscal 1956 the number of distributors had risen to 38.

Most of ATC's sales to its distributors and industrial dealers are made under ATC's dis-

speeds, and permits power turns and counter rotation.

Growth of ATC Sales and Earnings

Following the initial years the volume of ATC sales has rapidly increased. In each of the fiscal years 1955 and 1956 ATC's sales volume practically doubled that of the previous year, with sales being as follows: 1954—$2,264,236; 1955—$5,279,628; and 1956—$10,250,000 (unaudited).

During such years ATC earnings also increased notwithstanding the cost of an extensive engineering and development program, including the recent program resulting in the development of its larger horsepower models to be introduced in fiscal 1957. Operations in 1954 resulted in a net loss of $166,871. In the fiscal year 1955 net earnings before taxes amounted to $416,102 and after taxes to $346,781 and for the eleven months ended July 31, 1956 amounted to $637,621 before taxes and $306,211 after taxes (unaudited).

Markets and Applications for ATC Products

The markets and applications for ATC's products include housing and commercial construction such as shopping centers and industrial plants; road-building and heavy construction such as land leveling, grading, excavating and fill work on roads, building sites and land reclamation; municipality work such as sanitary landfill, sewer, pipe and water line installation and secondary road maintenance. Oil pipeline installation, logging, materials, handling in and around industrial plants, as well as specialized farming where rubber tired tractors are unsuitable, are among ATC's varied product applications. During 1956, ATC also completed, under contract with the U. S. Navy, production of a pilot model of electrically controlled crawler fork lift, with special hydraulic transmission, for shipboard materials handling. This unit is now undergoing tests by the Navy.

[fol. 44]

Distribution

In 1954 ATC had a distributor and dealer network composed of 43 outlets. By fiscal year-end 1956, ATC's domestic and foreign outlets had increased to 233. ATC's dealer and distributor organization includes agricultural and light construction machinery dealers located in rural areas and industrial and materials handling dealers located in cities and metropolitan areas. Included in ATC's distribution system are wholesale distributors who in turn sell and service retail dealers who sell ATC products and parts to end users and also render the mechanical service required. Starting with only 10 such wholesale distributors in 1954, by the end of fiscal 1956 the number of distributors had risen to 38.

Most of ATC's sales to its distributors and industrial dealers are made under ATC's distributors' floor plan arrangement under which title is retained by ATC until deferred payments have been made. Most sales to retail dealers are made under ATC's dealer floor plan arrangement under which ATC receives a title retention note from the dealer with the deferred installment payments being guaranteed by the distributor. All of such title retention instruments provide for immediate payment in the event of sale. ATC discounts a substantial portion of this paper with recourse with its banks. Subject to reasonable credit limitations sales are also made to distributors on 30 day open account.

Materials and Supplies

Steel is the most important raw material used by ATC. ATC purchases castings and forgings to its own specifications from various sources. ATC purchases from single sources of supply its torque converters and engines. ATC purchases its transmissions, other than its specially designed Terramatic transmission, from a single supplier. In the past it has also purchased its Terramatic transmission from a single supplier, but is now engaged in a program of purchasing from various sources the component parts for such Terramatic transmissions and by the end of October 1956 will be machining all housings and clutches and assembling its own Terramatic transmissions. ATC fabricates a substantial portion of the remaining materials and parts used in its products.

Competition

Crawler tractors are manufactured by a limited number of concerns, including a few who produce only a single model. In the sale of its six models of smaller crawler tractors ranging in size from 37 to 50 horsepower ATC experiences no material competition from the three largest crawler tractor manufacturers. Such competition arises principally from the limited lines of crawler tractors of two other manufacturers. ATC does not have reliable information as to the sales volume in the crawler tractor field of these two manufacturers but the total dollar sales of all products of each of them is substantially greater than that of ATC. In ATC's larger models now being produced and those to be introduced in fiscal 1957 as set forth under the heading "ATC's Products", competition will be experienced principally from the aforementioned three largest crawler tractor manufacturers, the major portion of whose sales are concentrated in heavy construction and road-building machinery. The sales and assets of these three crawler tractor manufacturers are substantially larger than those of ATC.

Employee Relations

ATC employs over 500 people at its Churubusco plant. It is presently conducting contract negotiations with the UAW-AFL-CIO union, recently designated as representative of the hourly rated production and maintenance employees. ATC, since it began manufacturing operations in 1950, has had no work stoppage in excess of one day's duration.

Manufacturing Facilities

ATC presently operates in one plant which, on the completion of the most recent addition in October 1956, will have a floor area of 250,000 square feet. This plant is located in Churubusco, Indiana, near Fort Wayne, on an 80-acre tract of land which also serves as a proving ground for ATC's tractors, attachments and earth moving equipment. ATC's plant facilities, since it began operations in 1950 in a building having a floor area of 6,900 square feet, expanded during the period from 1951 to 1954 to 70,000 square feet and in February 1956 to 145,000 square feet and finally in October of this year will reach 250,000 square feet. Despite this steady expansion of its facilities, ATC has been forced to operate under crowded and adverse conditions, including the storage of substantial inventory in open areas.

[fol. 45]

Manufacturing facilities include heavy and light fabrication and welding, machine shop facilities and a newly equipped transmission manufacturing operation. ATC's property also houses its service departments, storage, shipping and receiving docks, experimental shops, as well as assembly line and painting facilities. Most of ATC's 250,000 square feet of plant is less than three years old, of modern single-story steel and masonry construction.

Directors and Management of the Surviving Corporation

its products.

Competition

Crawler tractors are manufactured by a limited number of concerns, including a few who produce only a single model. In the sale of its six models of smaller crawler tractors ranging in size from 37 to 50 horsepower ATC experiences no material competition from the three largest crawler tractor manufacturers. Such competition arises principally from the limited lines of crawler tractors of two other manufacturers. ATC does not have reliable information as to the sales volume in the crawler tractor field of these two manufacturers but the total dollar sales of all products of each of them is substantially greater than that of ATC. In ATC's larger models now being produced and those to be introduced in fiscal 1957 as set forth under the heading "ATC's Products", competition will be experienced principally from the aforementioned three largest crawler tractor manufacturers, the major portion of whose sales are concentrated in heavy construction and road-building machinery. The sales and assets of these three crawler tractor manufacturers are substantially larger than those of ATC.

Employee Relations

ATC employs over 500 people at its Churubusco plant. It is presently conducting contract negotiations with the UAW-AFL-CIO union, recently designated as representative of the hourly rated production and maintenance employees. ATC, since it began manufacturing operations in 1950, has had no work stoppage in excess of one day's duration.

Manufacturing Facilities

ATC presently operates in one plant which, on the completion of the most recent addition in October 1956, will have a floor area of 250,000 square feet. This plant is located in Churubusco, Indiana, near Fort Wayne, on an 80-acre tract of land which also serves as a proving ground for ATC's tractors, attachments and earth moving equipment. ATC's plant facilities, since it began operations in 1950 in a building having a floor area of 6,900 square feet, expanded during the period from 1951 to 1954 to 70,000 square feet and in February 1956 to 145,000 square feet and finally in October of this year will reach 250,000 square feet. Despite this steady expansion of its facilities, ATC has been forced to operate under crowded and adverse conditions, including the storage of substantial inventory in open areas.

[fol. 45]

Manufacturing facilities include heavy and light fabrication and welding, machine shop facilities and a newly equipped transmission manufacturing operation. ATC's property also houses its service departments, storage, shipping and receiving docks, experimental shops, as well as assembly line and painting facilities. Most of ATC's 250,000 square feet of plant is less than three years old, of modern single-story steel and masonry construction.

Directors and Management of the Surviving Corporation

Directors of Surviving Corporation

Under the plan of merger Case will initially have a board of fifteen directors following the merger, including twelve members of the present Case board and three members of the present

ATC board. Each of the fifteen directors, whose names are set forth in the Articles of Merger and Certificate of Consolidation, is to serve from the effective date of the merger until the next annual Case stockholders' meeting and until the election and qualification of his successor. The following information is given as to the proposed directors:

Name of Director, Principal Occupation or Employment	Year First Became a Director of Case or ATC	Capital Stock of Case Owned Beneficially October 1, 1956		Capital Stock of ATC Owned Beneficially October 1, 1956	
		Common	Preferred	Common	Preferred
A. O. Choate Limited Partner, Clark, Dodge & Co. Investment Securities New York City	1914	4,276			
William Ewing Limited Partner, Morgan Stanley & Co. Investment Bankers New York City	1920	1,936 and undivided ⅓ interest in additional 1,000			
L. R. Clausen Director and Consultant of Case	1924	12,900	525		
H. S. Sturgis Financial Consultant	1927	1,000			
C. M. Robertson General Counsel of Case Lawyer, member of the firm of Robertson and Hoebreckx Milwaukee, Wisconsin	1936	2,000	250		
Frederick Nymeyer Frederick Nymeyer & Company Business Counsellor South Holland, Illinois	1942	2,020			
John T. Brown Chairman of the Board of Directors and President of Case	1947	2,420			
H. G. Barr Vice-President of Case	1952	2,000	10		
Wm. J. Grede Chairman of the Executive Committee of Case President, Grede Foundries, Inc. Manufacturer of Castings Milwaukee, Wisconsin	1953	600*			
E. P. Hamilton President, Hamilton Manufacturing Co. Manufacturer of Professional Furniture and Appliances Two Rivers, Wisconsin	1953	16			
Wm. B. Peters	1955	945			

Investment Securities New York City			
William Ewing Limited Partner, Morgan Stanley & Co. Investment Bankers New York City	1920	1,936 and undivided ⅓ interest in additional 1,000	
L. R. Clausen Director and Consultant of Case	1924	12,900	525
H. S. Sturgis Financial Consultant	1927	1,000	
C. M. Robertson General Counsel of Case Lawyer, member of the firm of Robertson and Hoebreckx Milwaukee, Wisconsin	1936	2,000	250
Frederick Nymeyer Frederick Nymeyer & Company Business Counsellor South Holland, Illinois	1942	2,020	
John T. Brown Chairman of the Board of Directors and President of Case	1947	2,420	
H. G. Barr Vice-President of Case	1952	2,000	10
Wm. J. Grede Chairman of the Executive Committee of Case President, Grede Foundries, Inc. Manufacturer of Castings Milwaukee, Wisconsin	1953	600*	
E. P. Hamilton President, Hamilton Manufacturing Co. Manufacturer of Professional Furniture and Appliances Two Rivers, Wisconsin	1953	16	
Wm. B. Peters Treasurer—Comptroller of Case	1955	942	
Allan B. Kline Farmer, Western Springs, Illinois	1955	100	

[fol. 46]

Name of Director, Principal Occupation or Employment	Year First Became a Director of Case or ATC	Capital Stock of Case Owned Beneficially October 1, 1956		Capital Stock of ATC Owned Beneficially October 1, 1956	
		Common	Preferred	Common	Preferred
Marc B. Rojtman President of ATC	1948			419,800	
Edward L. Elliott Senior member, Elliott & Company Brokerage Firm New York City	1954			10,200	**
Mentor Kraus Lawyer, member of the firm of Barrett, Barrett & McNagny Fort Wayne, Indiana	1952			10,000	

* Grede Foundries, Inc., of which Mr. Grede owns a controlling interest, owns an additional 500 shares of Common Stock and 100 shares of Preferred Stock of Case.
** Mrs. Ellen B. Elliott, wife of Mr. Edward L. Elliott, owns 5,000 shares of ATC Convertible Preferred Stock, Series 55-1.

All of the proposed directors, except Messrs. Elliott, Kraus and Rojtman, are now serving as members of the Case Board of Directors, having been elected to their present terms of office at the annual meeting of Case stockholders in April 1956. Mr. Elliott has been the senior member of the brokerage firm of Elliott & Company of New York City since its formation in February 1954, and for more than three years prior to that time had been a general partner of the brokerage firm of Van Alstyne, Noel & Co. of New York City. During the past five years Mr. Kraus has been a member of the firm of Barrett, Barrett & McNagny of Fort Wayne, Indiana, counsel for ATC. Mr. Rojtman has been President of ATC since its founding in 1948.

Mrs. Lillian Rojtman, Mr. Marc B. Rojtman's wife and a director and Secretary of ATC, owns beneficially 41,400 shares of ATC Common Stock. Mr. and Mrs. Rojtman own beneficially an aggregate of 461,200 shares of ATC Common Stock or approximately 42% of the total shares of ATC Common Stock outstanding as of October 1, 1956 and will be entitled to receive on the merger becoming effective an aggregate of 230,600 shares of Common Stock and 461,200 shares of 6½% Second Cumulative Preferred Stock of Case, or about 8% and 42%, respectively, of the number of shares of such classes of stock to be outstanding following the merger, based on the capitalization of ATC and Case as of July 31, 1956. (See the caption "Capitalization of ATC, Case and the Surviving Company.") [fol. 47]

Officers of Surviving Corporation

The officers of Case at the effective date of the merger will remain like officers of the surviving corporation. In addition it is proposed that Mr. Marc B. Rojtman, President of ATC, will become Executive Vice President and General Manager of Case, with the responsibility for and authority over the general management of the business affairs of Case. It is also proposed that Mr. Rojtman will be elected to the Executive Committee of the Case Board of Directors. It is expected that other officers of ATC will occupy appropriate positions in the management of the surviving corporation.

In connection with the merger, Mr. Rojtman will give Case an undertaking that he will not engage in any activities competitive with Case for a five year period from the effective date of the merger. While no determination has been made as to Mr. Rojtman's future salary with Case in the event the merger is consummated, it is not anticipated that such salary will initially exceed $50,000 per annum.

Senior member, Elliott & Company Brokerage Firm New York City		
Mentor Kraus	1952	10,000
Lawyer, member of the firm of Barrett, Barrett & McNagny Fort Wayne, Indiana		

* Grede Foundries, Inc., of which Mr. Grede owns a controlling interest, owns an additional 500 shares of Common Stock and 100 shares of Preferred Stock of Case.
** Mrs. Ellen B. Elliott, wife of Mr. Edward L. Elliott, owns 5,000 shares of ATC Convertible Preferred Stock, Series 55-1.

All of the proposed directors, except Messrs. Elliott, Kraus and Rojtman, are now serving as members of the Case Board of Directors, having been elected to their present terms of office at the annual meeting of Case stockholders in April 1956. Mr. Elliott has been the senior member of the brokerage firm of Elliott & Company of New York City since its formation in February 1954, and for more than three years prior to that time had been a general partner of the brokerage firm of Van Alstyne, Noel & Co. of New York City. During the past five years Mr. Kraus has been a member of the firm of Barrett, Barrett & McNagny of Fort Wayne, Indiana, counsel for ATC. Mr. Rojtman has been President of ATC since its founding in 1948.

Mrs. Lillian Rojtman, Mr. Marc B. Rojtman's wife and a director and Secretary of ATC, owns beneficially 41,400 shares of ATC Common Stock. Mr. and Mrs. Rojtman own beneficially an aggregate of 461,200 shares of ATC Common Stock or approximately 42% of the total shares of ATC Common Stock outstanding as of October 1, 1956 and will be entitled to receive on the merger becoming effective an aggregate of 230,600 shares of Common Stock and 461,200 shares of 6½% Second Cumulative Preferred Stock of Case, or about 8% and 42%, respectively, of the number of shares of such classes of stock to be outstanding following the merger, based on the capitalization of ATC and Case as of July 31, 1956. (See the caption "Capitalization of ATC, Case and the Surviving Company.") [fol. 47]

Officers of Surviving Corporation

The officers of Case at the effective date of the merger will remain like officers of the surviving corporation. In addition it is proposed that Mr. Marc B. Rojtman, President of ATC, will become Executive Vice President and General Manager of Case, with the responsibility for and authority over the general management of the business affairs of Case. It is also proposed that Mr. Rojtman will be elected to the Executive Committee of the Case Board of Directors. It is expected that other officers of ATC will occupy appropriate positions in the management of the surviving corporation.

In connection with the merger, Mr. Rojtman will give Case an undertaking that he will not engage in any activities competitive with Case for a five year period from the effective date of the merger. While no determination has been made as to Mr. Rojtman's future salary with Case in the event the merger is consummated, it is not anticipated that such salary will initially exceed $50,000 per annum.

Remuneration of Directors and Officers

The following table shows the aggregate remuneration paid by Case for services while acting as officers or directors of Case during the fiscal year ended October 31, 1955 to (i) each of

the three highest paid officers of Case, (ii) each director of Case during such fiscal year whose direct aggregate remuneration exceeded $30,000, and (iii) all directors and officers of Case as a group:

Name of Individual or Group	Capacity in which Remuneration was Received from Case	Fees and Salaries	Bonuses	Pension, Retirement and Similar Payments	Approximate Net Remuneration After Federal and State Income Taxes (4)
L. R. Clausen(1)	Chairman of Board and Director	$ 35,000	None	None	$23,036
John T. Brown	Chairman of Board President and Director	68,000	None	None	35,375
H. G. Barr	Vice-President and Director	45,000	None	None	26,927
A. R. Hauschel(2)	Vice-President and Director	30,000	None	None	16,762
C. G. Pearse(3)	Vice-President and Director	45,000	None	None	26,621
Wm. B. Peters	Secretary-Treasurer and Director	39,600	None	None	24,395
All Officers and Directors as a Group	Officers and Directors	304,334*	None	None	—

* Represents a decrease of $68,391 from the previous year.

(1) Effective April 28, 1955, Mr. Clausen retired as Chairman of the Board of Case and on November 1, 1955, became special consultant to the President. Mr. Clausen is entitled to and is receiving, effective November 1, 1955, an annual pension of $20,150 under Case's Pension System, based on 31 years of service, and is being paid for special consulting services at the rate of $15,000 per annum.

(2) Effective November 1, 1955, Mr. Hauschel resigned as Vice-President and Director of Case and retired.

(3) Mr. Pearse retired effective May 1, 1956.

(4) Computed with the benefit of the split income provision of the Federal tax law except for Mr. Hauschel to whom the provision is not applicable.

For the fiscal year 1955 Case accrued $69,320 for payment to the law firm of Robertson and Hoebreckx (in which firm Mr. C. M. Robertson is a partner) for legal services, including the services of Mr. Robertson as General Counsel of Case. Mr. Robertson has been reappointed General Counsel of Case for a three year term commencing January 1, 1956, with compensation to be approved by the President subject to a minimum retainer of $25,000 per annum.

During the fiscal year ended August 31, 1956 ATC paid $135,600 aggregate remuneration to all its directors and officers as a group. No officer or director received from ATC over $30,000 during such fiscal year. Mr. David Milligan, Vice President in Charge of Sales, received as compensation in such period $17,500 and 6,000 shares of Common Stock of ATC. ATC has no pension or retirement plan.

[fol. 48]

Case Pension System

Since 1915 Case has had in effect a Pension System under which employees have been awarded pensions upon retirement. The Pension System was established voluntarily by Case and is non-contributory. Employees of ATC joining Case as a result of the consummation of merger will become eligible for benefits under the Pension System in accordance with its terms.

The Pension System provides, among other things, that it shall apply to all officers and

Name of Individual or Group	Capacities in which Remuneration was Received from Case	Fees and Salaries	Bonuses	Pension, Retirement and Similar Payments	Remuneration After Federal and State Income Taxes (4)
L. R. Clausen(1)	Chairman of Board and Director	$ 35,000	None	None	$23,036
John T. Brown	Chairman of Board President and Director	68,000	None	None	35,375
H. G. Barr	Vice-President and Director	45,000	None	None	26,927
A. R. Hauschel(2)	Vice-President and Director	30,000	None	None	16,762
C. G. Pearse(3)	Vice-President and Director	45,000	None	None	26,621
Wm. B. Peters	Secretary-Treasurer and Director	39,600	None	None	24,395
All Officers and Directors as a Group	Officers and Directors	304,334*	None	None	—

* Represents a decrease of $68,391 from the previous year

(1) Effective April 28, 1955, Mr. Clausen retired as Chairman of the Board of Case and on November 1, 1955, became special consultant to the President. Mr. Clausen is entitled to and is receiving, effective November 1, 1955, an annual pension of $20,150 under Case's Pension System, based on 31 years of service, and is being paid for special consulting services at the rate of $15,000 per annum.

(2) Effective November 1, 1955, Mr. Hauschel resigned as Vice-President and Director of Case and retired.

(3) Mr. Pearse retired effective May 1, 1956.

(4) Computed with the benefit of the split income provision of the Federal tax law except for Mr. Hauschel to whom the provision is not applicable.

For the fiscal year 1955 Case accrued $69,320 for payment to the law firm of Robertson and Hoebreckx (in which firm Mr. C. M. Robertson is a partner) for legal services, including the services of Mr. Robertson as General Counsel of Case. Mr. Robertson has been reappointed General Counsel of Case for a three year term commencing January 1, 1956, with compensation to be approved by the President subject to a minimum retainer of $25,000 per annum.

During the fiscal year ended August 31, 1956 ATC paid $135,600 aggregate remuneration to all its directors and officers as a group. No officer or director received from ATC over $30,000 during such fiscal year. Mr. David Milligan, Vice President in Charge of Sales, received as compensation in such period $17,500 and 6,000 shares of Common Stock of ATC. ATC has no pension or retirement plan.

[fol. 48]

Case Pension System

Since 1915 Case has had in effect a Pension System under which employees have been awarded pensions upon retirement. The Pension System was established voluntarily by Case and is non-contributory. Employees of ATC joining Case as a result of the consummation of merger will become eligible for benefits under the Pension System in accordance with its terms.

The Pension System provides, among other things, that it shall apply to all officers and employees of Case, or any subsidiary company, who have been and are required to give their entire time to the business of Case and to other officers and employees as to whom the Board of Directors shall make specific provision; that every officer or employee, subject to the provisions of the System, who shall have attained the age of 65 years, may, at his own request, or in the discretion of Case, be retired; that every officer or employee retired under the System on account of age.

and who shall have been continuously in the service of Case for at least twenty years, shall thereby become eligible for the benefits of the Pension System; and that annual pension allowance shall be computed upon the following basis: for each year of active, continuous service rendered, an allowance of one percent of the highest amount of annual salary or wages paid to the beneficiary in any calendar year, within the ten years next preceding his retirement, except that in the case of any officer retired on account of age, no allowance shall be accumulated beyond age sixty-five and the pension of such officer shall be fixed on the basis of his retirement at that age. This limitation shall not apply to officers who at age sixty-five have not accumulated twenty years of continuous service. Such officers, by specific action of the Board of Directors, may be permitted after age 65 to accumulate additional service up to twenty years and have their pension computed accordingly. The pension allowance of present officers serving beyond age sixty-five, who have accumulated twenty years of continuous service, shall be computed only on service up to August 26, 1955.

The following table sets forth the computation of annual pension allowances under the terms of the Pension System:

Annual Salary Used as Basis for Computing Pension	Annual Pension Allowances		
	20 Years of Active, Continuous Service	30 Years of Active, Continuous Service	40 Years of Active, Continuous Service
$ 3,000	$ 600	$ 900	$ 1,200
5,000	1,000	1,500	2,000
10,000	2,000	3,000	4,000
20,000	4,000	6,000	8,000
40,000	8,000	12,000	16,000
70,000	14,000	21,000	28,000

The Pension System also provides for pension allowances, similarly calculated, for officers and employees who, regardless of age, become permanently incapacitated or unfitted for duty after having been continuously in the service of Case for at least twenty years.

No sums are set apart or accrued by Case to provide for payment of pensions under the Pension System and no officer or employee has any contract right to receive any pension upon retirement. The Pension System provides that it "is established voluntarily by Case and may be amended, suspended or annulled at any time by the Board of Directors."

[fol. 49]

Stock Options

A proposal has been submitted to Case stockholders that the Stock Option Plan of Case be revised to increase from 100,000 to 250,000 the aggregate number of shares with respect to which options to purchase Common Stock may be granted and to increase from 10,000 to 25,000 the maximum number of shares with respect to which options may be granted to any one person. See the caption herein "Proposed Revision of the Case Stock Option Plan." Case proposes, upon obtaining necessary stockholder approval of the above revision to the Stock Option Plan and upon the merger becoming effective, to grant to each of Messrs. William Grede and Marc B. Rojtman an option to purchase 25,000 shares of Common Stock of Case and to Mr. John T. Brown an option to purchase 19,000 additional shares of Common Stock of Case. These options are in each case to be granted pursuant to the terms of the Stock Option Plan, are to be at the fair market value of the stock, and are to terminate in ten years after the date of the grant thereof or earlier as provided in the Plan.

continuous service. Such officers, by specific action of the Board of Directors, may be permitted after age 65 to accumulate additional service up to twenty years and have their pension computed accordingly. The pension allowance of present officers serving beyond age sixty-five, who have accumulated twenty years of continuous service, shall be computed only on service up to August 26, 1955.

The following table sets forth the computation of annual pension allowances under the terms of the Pension System:

Annual Salary Used as Basis for Computing Pension	Annual Pension Allowances		
	20 Years of Active, Continuous Service	30 Years of Active, Continuous Service	40 Years of Active, Continuous Service
$ 3,000	$ 600	$ 900	$ 1,200
5,000	1,000	1,500	2,000
10,000	2,000	3,000	4,000
20,000	4,000	6,000	8,000
40,000	8,000	12,000	16,000
70,000	14,000	21,000	28,000

The Pension System also provides for pension allowances, similarly calculated, for officers and employees who, regardless of age, become permanently incapacitated or unfitted for duty after having been continuously in the service of Case for at least twenty years.

No sums are set apart or accrued by Case to provide for payment of pensions under the Pension System and no officer or employee has any contract right to receive any pension upon retirement. The Pension System provides that it "is established voluntarily by Case and may be amended, suspended or annulled at any time by the Board of Directors."

[fol. 49]

Stock Options

A proposal has been submitted to Case stockholders that the Stock Option Plan of Case be revised to increase from 100,000 to 250,000 the aggregate number of shares with respect to which options to purchase Common Stock may be granted and to increase from 10,000 to 25,000 the maximum number of shares with respect to which options may be granted to any one person. See the caption herein "Proposed Revision of the Case Stock Option Plan." Case proposes, upon obtaining necessary stockholder approval of the above revision to the Stock Option Plan and upon the merger becoming effective, to grant to each of Messrs. William Grede and Marc B. Rojtman an option to purchase 25,000 shares of Common Stock of Case and to Mr. John T. Brown an option to purchase 19,000 additional shares of Common Stock of Case. These options are in each case to be granted pursuant to the terms of the Stock Option Plan, are to be at the fair market value of the stock, and are to terminate in ten years after the date of the grant thereof or earlier as provided in the Plan.

No options to purchase Common Stock of Case were granted to or exercised by any directors or officers of Case since the beginning of the fiscal year ending October 31, 1956. On September 15, 1955 ATC granted to Mr. T. A. Haller, Vice President, Engineering, an option to purchase 2,000 shares of ATC Common Stock at the rate of 400 shares a year, or cumulative at the end of a five year period, at the closing market price on the date of the granting of the option, namely

$13. Any unexercised portion of this option is cancelled on termination of employment and will terminate upon the effectiveness of the merger.

Description of Securities of the Surviving Company

The following is a brief description of the terms of the 7% Cumulative Preferred Stock, the 6½% Second Cumulative Preferred Stock, and the Common Stock of Case, the surviving corporation, which will be effective upon the consummation of the merger. A complete statement of such terms is set forth in Articles 3 and 7 of Exhibit A hereto. The following information is also subject to the restrictions set forth under the heading "Certain Further Restrictions".

7% Cumulative Preferred Stock

Dividend Rights

The 7% Cumulative Preferred Stock is entitled to receive, when and as declared by the Board of Directors, before any dividends may be paid on the 6½% Second Cumulative Preferred Stock or on the Common Stock, cumulative dividends at the rate of 7% of the par value thereof per annum, payable quarterly.

Voting Rights

Each holder of record of 7% Cumulative Preferred Stock is entitled to eight votes per share. In addition, the Articles of Merger and Certificate of Consolidation provide that any change in the Articles of Association or By-laws of Case which would materially adversely affect the preferences, privileges, or voting powers of the 7% Cumulative Preferred Stock must be approved by the vote of the holders of at least two-thirds of such shares, voting as a class.

Liquidation Rights

In the event of any liquidation, dissolution or winding up of Case (voluntary or otherwise) the holders of the 7% Cumulative Preferred Stock shall be entitled to receive $100 per share, plus accrued dividends.

Preemptive Rights

Case has been advised by counsel that the holders of 7% Cumulative Preferred Stock have preemptive rights with respect to any authorized unissued shares of 7% Cumulative Preferred Stock which may be issued for cash.

Miscellaneous

The 7% Cumulative Preferred Stock has no conversion rights and is non-redeemable. It contains no sinking and purchase fund provisions and is not liable to further calls or to assessment by Case.

[fol. 50]

6½% Second Cumulative Preferred Stock

Dividend Rights

Subject to the prior rights of the 7% Cumulative Preferred Stock, each share of 6½% Second Cumulative Preferred Stock is entitled to receive, when and as declared by the Board of Directors, before any dividends are paid on the Common Stock, cumulative dividends at the rate of 6½% of the par value thereof per annum, payable quarterly. Such dividends shall accrue from the date of issue, if that be a dividend date, or otherwise from a date five days after the approval of the merger by the stockholders of both Case and ATC.

Voting Rights

If at any time six quarterly dividend installments (whether or not consecutive)

of such terms as set forth in Articles 5 and 7 of Exhibit 11 hereto. The following information is also subject to the restrictions set forth under the heading "Certain Further Restrictions".

7% Cumulative Preferred Stock

Dividend Rights

The 7% Cumulative Preferred Stock is entitled to receive, when and as declared by the Board of Directors, before any dividends may be paid on the 6½% Second Cumulative Preferred Stock or on the Common Stock, cumulative dividends at the rate of 7% of the par value thereof per annum, payable quarterly.

Voting Rights

Each holder of record of 7% Cumulative Preferred Stock is entitled to eight votes per share. In addition, the Articles of Merger and Certificate of Consolidation provide that any change in the Articles of Association or By-laws of Case which would materially adversely affect the preferences, privileges, or voting powers of the 7% Cumulative Preferred Stock must be approved by the vote of the holders of at least two-thirds of such shares, voting as a class.

Liquidation Rights

In the event of any liquidation, dissolution or winding up of Case (voluntary or otherwise) the holders of the 7% Cumulative Preferred Stock shall be entitled to receive $100 per share, plus accrued dividends.

Preemptive Rights

Case has been advised by counsel that the holders of 7% Cumulative Preferred Stock have preemptive rights with respect to any authorized unissued shares of 7% Cumulative Preferred Stock which may be issued for cash.

[fol. 50]

Miscellaneous

The 7% Cumulative Preferred Stock has no conversion rights and is non-redeemable. It contains no sinking and purchase fund provisions and is not liable to further calls or to assessment by Case.

6½% Second Cumulative Preferred Stock

Dividend Rights

Subject to the prior rights of the 7% Cumulative Preferred Stock, each share of 6½% Second Cumulative Preferred Stock is entitled to receive, when and as declared by the Board of Directors, before any dividends are paid on the Common Stock, cumulative dividends at the rate of 6½% of the par value thereof per annum, payable quarterly. Such dividends shall accrue from the date of issue, if that be a dividend date, or otherwise from a date five days after the approval of the merger by the stockholders of both Case and ATC.

Voting Rights

If at any time six quarterly dividend installments (whether or not consecutive) have not been paid to holders of the 6½% Second Cumulative Preferred Stock as of the date set for the election of directors by the stockholders, the holders thereof shall have the right, voting as a class, to elect two members of the Case Board of Directors. In addition, any alteration in the Articles of Association or By-laws which would materially adversely affect the preferences, privileges or

voting rights of the 6½% Second Cumulative Preferred Stock must be approved by the votes of at least two-thirds of such shares, voting as a class. Except as provided above and as provided by law, the 6½% Second Cumulative Preferred Stock shall have no vote.

Liquidation Rights

In the event of any voluntary liquidation, dissolution or winding up of Case the holders of the 6½% Second Cumulative Preferred Stock shall be entitled, subject to the prior rights of the 7% Cumulative Preferred Stock, to receive $7.35 per share, plus accrued dividends. In the event of any involuntary liquidation, dissolution or winding up of Case such shares shall be entitled to receive $7 per share, plus accrued dividends.

Redemption Provisions

The 6½% Second Cumulative Preferred Stock is redeemable, as a whole or in part, at any time at the option of Case at $7.35 a share, plus accrued dividends, on not less than 30 days notice. No shares of 6½% Second Cumulative Preferred Stock may be redeemed if there are any unpaid accrued dividends on the 7% Cumulative Preferred Stock. Unless all dividends upon 6½% Second Cumulative Preferred Stock shall have been paid, Case shall not redeem less than all outstanding shares of such stock.

Preemptive Rights

Case has been advised by counsel that the holders of 6½% Second Cumulative Preferred Stock will have preemptive rights, with respect to any authorized and unissued shares of 6½% Second Cumulative Preferred Stock which may be issued for cash.

Miscellaneous

The 6½% Second Cumulative Preferred Stock has no rights of conversion. It has no sinking and purchase fund provisions and is not liable to further calls or to assessment by Case.

Common Stock

Subject to the prior rights of the 7% Cumulative Preferred Stock and 6½% Second Cumulative Preferred Stock, dividends may be paid on the Common Stock as declared by the Board of Directors, provided however that no dividends upon the Common Stock in excess of 6% per annum shall be declared or paid if thereby the assets of Case applicable to the payment of dividends, as determined by the Board of Directors, shall be reduced to an amount less than $2,000,000. Each holder of record of Common Stock is entitled to one vote per share.

[fol. 51]

In case of liquidation, dissolution, or winding up (whether voluntary or involuntary), the holders of the Common Stock are entitled to the net assets of Case after the holders of the 7% Cumulative Preferred Stock and the 6½% Second Cumulative Preferred Stock have been paid the full amounts to which they are entitled.

Case has been advised by counsel that the holders of Common Stock have preemptive rights with respect to any of the authorized and unissued shares of Common Stock which may be issued for cash except that 250,000 shares will be reserved for issuance, free of preemptive or subscription rights, under the Stock Option Plan under the proposed revision. See the caption "Proposed Revision of the Case Stock Option Plan" herein.

of any involuntary liquidation, dissolution or winding up of Case such shares shall be entitled to receive $7 per share, plus accrued dividends.

Redemption Provisions

The 6½% Second Cumulative Preferred Stock is redeemable, as a whole or in part, at any time at the option of Case at $7.35 a share, plus accrued dividends, on not less than 30 days notice. No shares of 6½% Second Cumulative Preferred Stock may be redeemed if there are any unpaid accrued dividends on the 7% Cumulative Preferred Stock. Unless all dividends upon 6½% Second Cumulative Preferred Stock shall have been paid, Case shall not redeem less than all outstanding shares of such stock.

Preemptive Rights

Case has been advised by counsel that the holders of 6½% Second Cumulative Preferred Stock will have preemptive rights, with respect to any authorized and unissued shares of 6½% Second Cumulative Preferred Stock which may be issued for cash.

Miscellaneous

The 6½% Second Cumulative Preferred Stock has no rights of conversion. It has no sinking and purchase fund provisions and is not liable to further calls or to assessment by Case.

Common Stock

Subject to the prior rights of the 7% Cumulative Preferred Stock and 6½% Second Cumulative Preferred Stock, dividends may be paid on the Common Stock as declared by the Board of Directors, provided however that no dividends upon the Common Stock in excess of 6% per annum shall be declared or paid if thereby the assets of Case applicable to the payment of dividends, as determined by the Board of Directors, shall be reduced to an amount less than $2,000,000. Each holder of record of Common Stock is entitled to one vote per share.

In case of liquidation, dissolution, or winding up (whether voluntary or involuntary), the holders of the Common Stock are entitled to the net assets of Case after the holders of the 7% Cumulative Preferred Stock and the 6½% Second Cumulative Preferred Stock have been paid the full amounts to which they are entitled.

Case has been advised by counsel that the holders of Common Stock have preemptive rights with respect to any of the authorized and unissued shares of Common Stock which may be issued for cash except that 250,000 shares will be reserved for issuance, free of preemptive or subscription rights, under the Stock Option Plan under the proposed revision. See the caption "Proposed Revision of the Case Stock Option Plan" herein.

Certain Further Restrictions

Under the terms of a Trust Indenture between Case and The First National City Bank of New York, Trustee, dated February 1, 1953, Case may not declare any dividend on any share of its capital stock other than shares of its 7% Cumulative Preferred Stock outstanding on February 1, 1953 (except dividends payable in shares of its capital stock) or make any distributions (except distributions payable in shares of its capital stock) in respect of, or purchase, redeem, or acquire for a consideration, or permit any subsidiary to purchase or acquire for a consideration,

[fol. 51]

any shares of capital stock of any class of the corporation, if immediately after such declaration of a dividend or such distribution, purchase, redemption or acquisition the aggregate of all such dividends, distributions, purchases, redemptions and acquisitions, plus all dividends declared on such shares of 7% Cumulative Preferred Stock, subsequent to October 31, 1952, would exceed the aggregate of (i) the amount of net income of the Company from November 1, 1952 to the date of such dividend, distribution, purchase, redemption, or acquisition, plus (ii) $10,000,000, plus (iii) any net consideration received by the Company after October 31, 1952 with respect to the issue of any of its capital stock of any class, which net consideration, in so far as it may consist of property other than cash, shall be taken at the fair value thereof as determined by the Board of Directors of the Company at the time of its receipt. Giving effect to the proposed merger, and on the basis of the pro forma balance sheet included herein $13,849,580 of the earned surplus of Case will be unrestricted under such terms. It is the present intention of the Board of Directors of Case to pay dividends on the Common Stock only out of future earnings.

Amendments to Articles of Association of Case

The Plan of Merger provides that the Articles of Association of Case shall on the effective date of the merger be amended to read as set forth in Article 3 of the Articles of Merger and Certificate of Consolidation annexed hereto as Exhibit A. The purposes of these amendments are to broaden the business purposes of Case as permitted under the Wisconsin Business Corporation Law, to provide for a new class of 6½% Second Cumulative Preferred Stock to be issued under the terms of the merger, to waive preemptive rights with respect to 250,000 shares of Common Stock for which options may be granted under the Stock Option Plan, and to provide that the number of directors of Case shall be fixed by the By-laws.

Certain Tax Consequences of the Merger

A ruling has been received from the Commissioner of Internal Revenue to the effect that the merger will constitute a tax-free reorganization under which no gain or loss will be recognized to the holders of the Common Stock of ATC as a consequence of such merger; also that although the 6½% Second Cumulative Preferred Stock of Case will be "Section 306 stock", former ATC stockholders who receive the same by reason of the merger will not be taxed on the basis of ordinary income with respect to the proceeds of the disposition of such stock unless such disposition is in anticipation of a redemption thereof shortly after the issuance of such stock.

Abandonment of the Merger

The merger may be abandoned at any time before its effectiveness by mutual agreement of the Boards of Directors of Case and ATC. The merger may also be abandoned within five days after the stockholders' meetings of Case and ATC (i) by Case if the number of shares held by stockholders of Case or ATC or both objecting to the merger is, in the opinion of the Case Board, so substantial as to render the merger inadvisable, and (ii) by ATC if the proposed revision to the Case Stock Option Plan is not approved by the stockholders of Case.

on the basis of the pro forma balance sheet included herein $13,849,580 of the earned surplus of Case will be unrestricted under such terms. It is the present intention of the Board of Directors of Case to pay dividends on the Common Stock only out of future earnings.

Amendments to Articles of Association of Case

The Plan of Merger provides that the Articles of Association of Case shall on the effective date of the merger be amended to read as set forth in Article 3 of the Articles of Merger and Certificate of Consolidation annexed hereto as Exhibit A. The purposes of these amendments are to broaden the business purposes of Case as permitted under the Wisconsin Business Corporation Law, to provide for a new class of 6½% Second Cumulative Preferred Stock to be issued under the terms of the merger, to waive preemptive rights with respect to 250,000 shares of Common Stock for which options may be granted under the Stock Option Plan, and to provide that the number of directors of Case shall be fixed by the By-laws.

Certain Tax Consequences of the Merger

A ruling has been received from the Commissioner of Internal Revenue to the effect that the merger will constitute a tax-free reorganization under which no gain or loss will be recognized to the holders of the Common Stock of ATC as a consequence of such merger; also that although the 6½% Second Cumulative Preferred Stock of Case will be "Section 306 stock", former ATC stockholders who receive the same by reason of the merger will not be taxed on the basis of ordinary income with respect to the proceeds of the disposition of such stock unless such disposition is in anticipation of a redemption thereof shortly after the issuance of such stock.

[fol. 52]

Abandonment of the Merger

The merger may be abandoned at any time before its effectiveness by mutual agreement of the Boards of Directors of Case and ATC. The merger may also be abandoned within five days after the stockholders' meetings of Case and ATC (i) by Case if the number of shares held by stockholders of Case or ATC or both objecting to the merger is, in the opinion of the Case Board, so substantial as to render the merger inadvisable, and (ii) by ATC if the proposed revision to the Case Stock Option Plan is not approved by the stockholders of Case.

Rights of Dissenting Stockholders

Any holder of shares of Common Stock or 7% Cumulative Preferred Stock of Case is entitled to be paid the fair value of his shares, in accordance with the provisions of Section 180.69 of Wisconsin Statutes 1955, if he files with Case a written objection to the plan of merger at least 48 hours prior to the special meeting of stockholders called for November 15, 1956 and does not vote in favor of the merger at such meeting. Within 10 days of the effectiveness of the merger, Case shall notify each dissenting stockholder in writing that the merger has become effective. Each such dissenting stockholder desiring payment for his shares shall then make written demand on Case, within 20 days after the mailing of such notice, for payment of the fair value of his shares as of the day before the stockholders' vote approving the merger. Such demand shall state the

number and class of shares owned by the dissenting stockholder. If within 30 days of the effectiveness of the merger Case and a dissenting stockholder do not agree as to the fair value of his shares, the dissenting stockholder may, within 60 days after the expiration of the above 30 day period, file a petition in the circuit court for Racine County, Wisconsin, asking for a finding and determination of the fair value of such shares and shall be entitled to judgment against Case for the amount of such fair value, together with interest thereon at the rate of 5% per annum to the date of such judgment. Costs shall be taxed as the court may deem equitable.

The holders of Common Stock of ATC are also entitled, on due written objection to the merger, to demand payment for their stock and to have such stock appraised and paid for by Case in accordance with the laws of the State of New York.

II. Proposed Revision of the Case Stock Option Plan

At the annual meeting of the stockholders in 1952 a Stock Option Plan was adopted authorizing the Board of Directors to grant up to July 1, 1962 restricted stock options to employees (including officers) of Case to purchase Case Common Stock. The Case Board of Directors recommends that if the merger of ATC into Case becomes effective the Plan should be revised (i) to increase the maximum aggregate number of shares with respect to which options can be granted to 250,000 and (ii) to increase the number of shares with respect to which options can be granted to any one employee to 25,000. The favorable vote of a majority of the capital stock of Case is required for the approval of such a revision.

The Plan presently provides that the aggregate number of shares for which options may be granted under the Plan shall not exceed 100,000 shares of new Common Stock and that the aggregate number of shares for which options may be granted to any one employee under the Plan shall not exceed 10,000 shares of new Common Stock. The Plan provides that the purchase price of the Common Stock under an option shall not be less than the fair market value of the Common Stock at the time the option is granted, that each option granted under the Plan shall terminate not later than ten years after the granting of the option, that an option shall become exercisable only after eighteen months of continued employment immediately following the granting of the option and that, except in case of death or retirement with the consent of Case, an option may be exercised only during the continuance of the optionee's employment.

During the period of more than four years since the adoption of the Plan, the Case Board of Directors has granted options totalling 42,500 shares, but options covering 16,100 shares have lapsed or terminated, leaving 26,400 shares subject to options. In allotting the options totalling 42,500 shares, indicated above, the Board of Directors granted options covering 25,500 shares to eight eligible officers and directors with the balance being granted to other employees. Set forth below is information as to the amount of options already granted to (i) each director or officer of Case named in the foregoing remuneration table and (ii) each person named to be a director of Case immediately following the effective date of the merger: H. G. Barr, 3,000 shares; John T. Brown, 6,000 shares; A. R. Hauschel, 1,000 shares; C. G. Pearse, 3,500 shares; and William B. Peters, 3,000 shares.

At a recent meeting the Case Board of Directors reviewed the subject of stock options, particularly in light of the proposed merger of ATC into Case. The Board felt that it was particularly important to provide inducements for the acquisition and retention of top quality

[fol. 53]

The holders of Common Stock of ATC are also entitled, on due written objection to the merger, to demand payment for their stock and to have such stock appraised and paid for by Case in accordance with the laws of the State of New York.

II. Proposed Revision of the Case Stock Option Plan

At the annual meeting of the stockholders in 1952 a Stock Option Plan was adopted authorizing the Board of Directors to grant up to July 1, 1962 restricted stock options to employees (including officers) of Case to purchase Case Common Stock. The Case Board of Directors recommends that if the merger of ATC into Case becomes effective the Plan should be revised (i) to increase the maximum aggregate number of shares with respect to which options can be granted to 250,000 and (ii) to increase the number of shares with respect to which options can be granted to any one employee to 25,000. The favorable vote of a majority of the capital stock of Case is required for the approval of such a revision.

The Plan presently provides that the aggregate number of shares for which options may be granted under the Plan shall not exceed 100,000 shares of new Common Stock and that the aggregate number of shares for which options may be granted to any one employee under the Plan shall not exceed 10,000 shares of new Common Stock. The Plan provides that the purchase price of the Common Stock under an option shall not be less than the fair market value of the Common Stock at the time the option is granted, that each option granted under the Plan shall terminate not later than ten years after the granting of the option, that an option shall become exercisable only after eighteen months of continued employment immediately following the granting of the option and that, except in case of death or retirement with the consent of Case, an option may be exercised only during the continuance of the optionee's employment.

During the period of more than four years since the adoption of the Plan, the Case Board of Directors has granted options totalling 42,500 shares, but options covering 16,100 shares have lapsed or terminated, leaving 26,400 shares subject to options. In allotting the options totalling 42,500 shares, indicated above, the Board of Directors granted options covering 25,500 shares to eight eligible officers and directors with the balance being granted to other employees. Set forth below is information as to the amount of options already granted to (i) each director or officer of Case named in the foregoing remuneration table and (ii) each person named to be a director of Case immediately following the effective date of the merger: H. G. Barr, 3,000 shares; John T. Brown, 6,000 shares; A. R. Hauschel, 1,000 shares; C. G. Pearse, 3,500 shares; and William B. Peters, 3,000 shares.

[fol. 53]

At a recent meeting the Case Board of Directors reviewed the subject of stock options, particularly in light of the proposed merger of ATC into Case. The Board felt that it was particularly important to provide inducements for the acquisition and retention of top-quality technical and executive personnel, and to give these employees even greater incentives in promoting the progress of Case. Accordingly, your Board of Directors recommends that the stockholders vote in favor of increasing the aggregate number of shares for which options may be granted under the Plan to 250,000 and increasing the maximum number of shares for which options may be granted to any one employee to 25,000. This recommendation is made with full recognition that under the Internal Revenue Code no deduction is allowable at any time

to Case with respect to shares purchased by optionees under the Plan. However, it was also recognized that no income results to the optionee at the time of the granting of his option or at the time of the purchase of shares upon exercise of his option. Furthermore, on the sale of shares acquired through the exercise of such options the optionee is taxed on income from such sale at capital gains rates if such sale is made at least six months after the exercise of the option and at least two years after the date of its grant.

Case has agreed, in connection with the proposed merger with ATC, that upon such merger becoming effective and upon this revision to the Stock Option Plan being approved, it will forthwith grant to each of Messrs. Wm. J. Grede, a director and Chairman of the Executive Committee of Case, and Marc B. Rojtman, the President of ATC, an option to purchase 25,000 shares of Common Stock of Case and to Mr. John T. Brown, Chairman of the Board and President of Case, an option to purchase 19,000 additional shares of Common Stock of Case. These options are in each case to be granted pursuant to the terms of the Stock Option Plan, are to be at the fair market value of the stock, and are to terminate in ten years after the date of the grant thereof or earlier as provided in the Plan. It is also proposed that options will be granted to approximately seven key employees of ATC who presently hold options to purchase Common Stock of ATC. These options will be granted in accordance with the terms of the Case Stock Option Plan. While no definite commitments have been made to these employees, it is presently anticipated that options will be granted to them to purchase an aggregate of not to exceed 20,000 shares of Case Common Stock under the Plan in view of their agreements to waive their existing rights to purchase ATC Common Stock. It is impossible to indicate the names of any other officers or employees of the surviving company who will receive options or the number of shares to be covered by such options, for no determination or allotment has been made. The closing quotation of the Common Stock of Case on the New York Stock Exchange on October 15, 1956 was 13⅝ per share.

In the event that the merger of ATC into Case is not approved by the stockholders of both companies or is abandoned for any reason, the proposed revision to the Stock Option Plan will be abandoned.

Miscellaneous

Shares for which a proxy in the accompanying form is properly signed and returned will be voted in accordance with any choice specified therein, and where no choice is specified will be voted: (i) for authorizing the plan of merger, unless it shall have been abandoned before the meeting; (ii) for the revision of the Case Stock Option Plan; and (iii) in accordance with the discretion of the person or persons voting them with respect to such other matters, if any, as may come before the meeting. The management is not aware that any such other matters are to be presented.

[fol. 54]

Attention is called to the financial statements herein. Additional financial statements relating to prior years for Case are on file at the office of the Securities and Exchange Commission, Washington, D. C., and at the office of the New York Stock Exchange.

Officers, directors and regular employees of Case and representatives of Georgeson & Co., New York, N. Y., will solicit proxies from Case's stockholders by telephone, telegraph and personal interview as well as by mail. Payments in the form of compensation and reimbursement of expenses are not expected to exceed $12,500. The cost of solicitation of such proxies will be borne by Case.

shares acquired through the exercise of such options the optionee is taxed on income from such sale at capital gains rates if such sale is made at least six months after the exercise of the option and at least two years after the date of its grant.

Case has agreed, in connection with the proposed merger with ATC, that upon such merger becoming effective and upon this revision to the Stock Option Plan being approved, it will forthwith grant to each of Messrs. Wm. J. Grede, a director and Chairman of the Executive Committee of Case, and Marc B. Rojtman, the President of ATC, an option to purchase 25,000 shares of Common Stock of Case and to Mr. John T. Brown, Chairman of the Board and President of Case, an option to purchase 19,000 additional shares of Common Stock of Case. These options are in each case to be granted pursuant to the terms of the Stock Option Plan, are to be at the fair market value of the stock, and are to terminate in ten years after the date of the grant thereof or earlier as provided in the Plan. It is also proposed that options will be granted to approximately seven key employees of ATC who presently hold options to purchase Common Stock of ATC. These options will be granted in accordance with the terms of the Case Stock Option Plan. While no definite commitments have been made to these employees, it is presently anticipated that options will be granted to them to purchase an aggregate of not to exceed 20,000 shares of Case Common Stock under the Plan in view of their agreements to waive their existing rights to purchase ATC Common Stock. It is impossible to indicate the names of any other officers or employees of the surviving company who will receive options or the number of shares to be covered by such options, for no determination or allotment has been made. The closing quotation of the Common Stock of Case on the New York Stock Exchange on October 15, 1956 was 13⅝ per share.

In the event that the merger of ATC into Case is not approved by the stockholders of both companies or is abandoned for any reason, the proposed revision to the Stock Option Plan will be abandoned.

Miscellaneous

Shares for which a proxy in the accompanying form is properly signed and returned will be voted in accordance with any choice specified therein, and where no choice is specified will be voted: (i) for authorizing the plan of merger, unless it shall have been abandoned before the meeting; (ii) for the revision of the Case Stock Option Plan; and (iii) in accordance with the discretion of the person or persons voting them with respect to such other matters, if any, as may come before the meeting. The management is not aware that any such other matters are to be presented.

[fol. 54]

Attention is called to the financial statements herein. Additional financial statements relating to prior years for Case are on file at the office of the Securities and Exchange Commission, Washington, D. C., and at the office of the New York Stock Exchange.

Officers, directors and regular employees of Case and representatives of Georgeson & Co., New York, N. Y., will solicit proxies from Case's stockholders by telephone, telegraph and personal interview as well as by mail. Payments in the form of compensation and reimbursement of expenses are not expected to exceed $12,500. The cost of solicitation of such proxies will be borne by Case.

It is important that proxies be returned promptly. Therefore, stockholders who do not expect to attend in person are urged to fill in, sign and return the enclosed proxy.

BY ORDER OF THE BOARD OF DIRECTORS

L. T. NEWMAN,
Secretary.

Dated: October 15, 1956.

INDEX TO FINANCIAL STATEMENTS

OPINION OF INDEPENDENT PUBLIC ACCOUNTANTS

To the Board of Directors of
J. I. CASE COMPANY

In our opinion, the financial statements of J. I. Case Company, listed in the attached index, present fairly the financial position of J. I. Case Company at October 31, 1955 and the results of its operations for the three years then ended, and the "Summary of Sales and Earnings" fairly summarizes the data shown therein for the ten years ended October 31, 1955, in conformity with generally accepted accounting principles applied on a consistent basis throughout the periods, except for the change, which we approve, in the method of inventory valuation in the fiscal year 1951, as explained in note 5 to the "Summary of Sales and Earnings." This opinion is based on examinations of the statements and summary which were made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

OPINION OF INDEPENDENT PUBLIC ACCOUNTANTS

[fol. 55]

To the Board of Directors of
J. I. CASE COMPANY

In our opinion, the financial statements of J. I. Case Company, listed in the attached index, present fairly the financial position of J. I. Case Company at October 31, 1955 and the results of its operations for the three years then ended, and the "Summary of Sales and Earnings" fairly summarizes the data shown therein for the ten years ended October 31, 1955, in conformity with generally accepted accounting principles applied on a consistent basis throughout the periods, except for the change, which we approve, in the method of inventory valuation in the fiscal year 1951, as explained in note 5 to the "Summary of Sales and Earnings." This opinion is based on examinations of the statements and summary which were made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

PRICE WATERHOUSE & CO.

CHICAGO
December 28, 1955

J. I. CASE COMPANY

BALANCE SHEET

October 31, 1955 and July 31, 1956

(See notes to financial statements)

ASSETS

	October 31, 1955		July 31, 1956 (Unaudited)	
CURRENT ASSETS:				
Cash		$ 3,692,445		$ 4,659,794
Notes and accounts receivable:				
Customers—				
Notes	$ 7,043,325		$ 8,177,059	
Accounts	46,364,981		60,802,874	
Sundry debtors	469,418		1,326,464	
	$53,877,724		$70,306,397	
Estimated doubtful accounts (Note 2)	700,000	53,177,724	887,831	69,418,566
Inventories (valued at cost, principally on "last-in, first-out" basis) (Note 3):				
Raw materials and supplies	$ 7,319,772			
Work in process	8,203,919			
Finished goods (including freight and duty)	26,664,847	42,188,538		39,723,815
Total current assets		$ 99,058,707		$113,802,175
OTHER ASSETS:				
Marketable foreign securities, at the lower of cost or approximate quoted market value, plus accrued interest	$ 598,845		$ 62,000	
Miscellaneous	193,516	792,361	202,354	264,354
PROPERTIES (based on 1907 or 1911 appraisals, plus subsequent additions at cost):				
Land	$ 2,350,790		$ 2,364,417	
Buildings and building equipment	$21,792,908		$21,702,855	
Machinery and equipment	38,780,754		38,807,740	
Patterns	1,530,823		1,594,533	
Furniture and fixtures	1,618,942		1,710,669	
Autos, auto trucks and planes	217,102		216,275	
	$63,940,529		$64,032,072	
Accumulated depreciation (Note 4)	32,785,039		35,299,273	

[fol. 56]

ASSETS

	October 31, 1955		July 31, 1956 (Unaudited)	
CURRENT ASSETS:				
Cash		$ 3,692,445		$ 4,659,794
Notes and accounts receivable:				
Customers—				
Notes	$ 7,043,325		$ 8,177,059	
Accounts	46,364,981		60,802,874	
Sundry debtors	469,418		1,326,464	
	$53,877,724		$70,306,397	
Estimated doubtful accounts (Note 2)	700,000	53,177,724	887,831	69,418,566
Inventories (valued at cost, principally on "last-in, first-out" basis) (Note 3):				
Raw materials and supplies	$ 7,319,772			
Work in process	8,203,919			
Finished goods (including freight and duty)	26,664,847	42,188,538		39,723,815
Total current assets		$ 99,058,707		$113,802,175
OTHER ASSETS:				
Marketable foreign securities, at the lower of cost or approximate quoted market value, plus accrued interest	$ 598,845		$ 62,000	
Miscellaneous	193,516	792,361	202,354	264,354
PROPERTIES (based on 1907 or 1911 appraisals, plus subsequent additions at cost):				
Land	$ 2,350,790		$ 2,364,417	
Buildings and building equipment	$21,792,908		$21,702,855	
Machinery and equipment	38,780,754		38,807,740	
Patterns	1,530,823		1,594,533	
Furniture and fixtures	1,618,942		1,710,669	
Autos, auto trucks and planes	217,102		216,275	
	$63,940,529		$64,032,072	
Accumulated depreciation (Note 4)	32,785,039		35,299,273	
	$31,155,490		$28,732,799	
Construction in progress	—	31,155,490	895,008	29,627,807
		33,506,280		31,992,224
PATENTS, DESIGNS, DEVICES, ETC. (Note 5)		1		1
PREPAID INSURANCE PREMIUMS, ETC.		904,071		909,653
		$134,261,420		$146,968,407

[fol. 56]

J. I. CASE COMPANY

BALANCE SHEET

October 31, 1955 and July 31, 1956

(See notes to financial statements)

LIABILITIES

	October 31, 1955		July 31, 1956 (Unaudited)	
CURRENT LIABILITIES:				
Notes payable to banks		$ 7,000,000		$ 27,450,000
Accounts payable		3,491,202		2,539,465
Accrued liabilities		1,883,375		594,573
Dividends payable on preferred stock		162,586		162,586
Federal and other taxes on income		2,017,006		705,678
Total current liabilities		$ 14,554,169		$ 31,452,302
TWENTY-FIVE YEAR 3½% SINKING FUND DEBENTURES, due February 1, 1978:				
(Sinking fund payments of $630,000 per year are required starting in 1958)		25,000,000		25,000,000
CAPITAL STOCK (Note 6):				
7% cumulative preferred stock:				
Authorized—101,825 shares $100 par value each				
Issued—92,906 shares	$ 9,290,600		$ 9,290,600	
Common stock:				
Authorized—4,000,000 shares of $12.50 par value each				
Issued—2,262,766 shares	28,284,575	37,575,175	28,284,575	37,575,175
CAPITAL CONTRIBUTED BY STOCKHOLDERS IN EXCESS OF PAR VALUE OF SECURITIES*		10,008,314		10,008,314
ACCUMULATED EARNINGS RETAINED (Note 7):				
For possible future inventory losses*	$ 7,000,000		$ 7,000,000	
For general contingencies*	5,975,000		5,975,000	
For reinvestment in the business (per accompanying statement)	34,148,762	47,123,762	29,957,616	42,932,616

* No change during three year and nine month period ended July 31, 1956.

[fol. 47]

	October 31, 1955		July 31, 1956 (Unaudited)	
CURRENT LIABILITIES:				
Notes payable to banks		$ 7,000,000		$ 27,450,000
Accounts payable		3,491,202		2,539,465
Accrued liabilities		1,883,375		594,573
Dividends payable on preferred stock		162,586		162,586
Federal and other taxes on income		2,017,006		705,678
Total current liabilities		$ 14,554,169		$ 31,452,302
TWENTY-FIVE YEAR 3½% SINKING FUND DEBENTURES, due February 1, 1978:				
(Sinking fund payments of $630,000 per year are required starting in 1958)		25,000,000		25,000,000
CAPITAL STOCK (Note 6):				
7% cumulative preferred stock:				
Authorized—101,825 shares $100 par value each				
Issued—92,906 shares	$ 9,290,600		$ 9,290,600	
Common stock:				
Authorized—4,000,000 shares of $12.50 par value each				
Issued—2,262,766 shares	28,284,575	37,575,175	28,284,575	37,575,175
CAPITAL CONTRIBUTED BY STOCKHOLDERS IN EXCESS OF PAR VALUE OF SECURITIES*		10,008,314		10,008,314
ACCUMULATED EARNINGS RETAINED (Note 7):				
For possible future inventory losses*	$ 7,000,000		$ 7,000,000	
For general contingencies*	5,975,000		5,975,000	
For reinvestment in the business (per accompanying statement)	34,148,762	47,123,762	29,957,616	42,932,616
		$134,261,420		$146,968,407

* No change during three year and nine month period ended July 31, 1956.

[fol. 57]

J. I. CASE COMPANY

STATEMENT OF INCOME AND ACCUMULATED EARNINGS RETAINED FOR REINVESTMENT IN THE BUSINESS

For the Three Years Ended October 31, 1955 and Nine Months Ended July 31, 1956

(See notes to financial statements)

	Nine months ended July 31, 1956 (unaudited)	Fiscal year ended October 31, 1955	1954	1953
Sales	$64,102,899	$94,848,841	$92,350,901	$111,470,611
Less—Discounts, freight, duty, etc.	4,491,367	5,955,099	5,239,275	7,007,192
Net sales	$59,611,532	$88,893,742	$87,111,626	$104,463,419
Deduct—Cost of goods sold (Note 3)	54,759,333	74,524,310	75,732,169	89,914,152
Gross profit	$ 4,852,199	$14,369,432	$11,379,457	$ 14,549,267
Selling, distribution and administrative expense (Note 2)	8,516,510	11,787,496	11,555,974	11,760,802
Income or (loss) from operations	$(3,664,311)	$ 2,581,936	$ (176,517)	$ 2,788,465
Other income or (expense):				
Cash discount on purchases	$ 157,963	$ 212,475	$ 183,300	$ 282,582
Interest	398,795	421,189	290,943	176,147
Miscellaneous	(40,266)	(110,191)	211,692	82,939
	$ 516,492	$ 523,473	$ 685,935	$ 541,668
	$(3,147,819)	$ 3,105,409	$ 509,418	$ 3,330,133
Interest expense:				
3½% debentures	$ 656,250	$ 875,000	$ 875,000	$ 656,250
Other interest	599,320	560,579	638,670	1,043,318
	$ 1,255,570	$ 1,435,579	$ 1,513,670	$ 1,699,568
Income or (loss) before provision for taxes on income	$(4,403,389)	$ 1,669,830	$(1,004,252)	$ 1,630,565
Provision for taxes on income or (refund):				
Federal	$ (700,000)	$ 500,000	$ (500,000)	$ 480,000
State and foreign	—	267,000	45,000	370,000
	$ (700,000)	$ 767,000	$ (455,000)	$ 850,000
Net income or (loss) for the period	$(3,703,389)	$ 902,830	$ (549,252)	$ 780,565
Accumulated earnings retained for reinvestment in the business at beginning of period	34,148,762	34,058,860	36,389,837	40,785,114
	$30,445,373	$34,961,690	$35,840,585	$ 41,565,679
Deduct:				
Cash dividends paid or declared:				
7% cumulative preferred stock $7.00 per share ($3.50 per share paid to July 31, 1956)	$ 325,171	$ 650,342	$ 650,342	$ 650,342
7% cumulative preferred stock $1.75 per share payable October 1, 1956 to holders of record September 12, 1956, and $1.75 per share payable January 3, 1956 to holders of record December 12, 1955	162,586	162,586		

[fol. 58]

	1956 (unaudited)	Fiscal years ended [illegible] 1955	1954	1953
Sales	$64,102,899	$94,848,841	$92,350,901	$111,470,611
Less—Discounts, freight, duty, etc.	4,491,367	5,955,099	5,239,275	7,007,192
Net sales	$59,611,532	$88,893,742	$87,111,626	$104,463,419
Deduct—Cost of goods sold (Note 3)	54,759,333	74,524,310	75,732,169	89,914,152
Gross profit	$ 4,852,199	$14,369,432	$11,379,457	$ 14,549,267
Selling, distribution and administrative expense (Note 2)	8,516,510	11,787,496	11,555,974	11,760,802
Income or (loss) from operations	$(3,664,311)	$ 2,581,936	$ (176,517)	$ 2,788,465
Other income or (expense):				
Cash discount on purchases	$ 157,963	$ 212,475	$ 183,300	$ 282,582
Interest	398,795	421,189	290,943	176,147
Miscellaneous	(40,266)	(110,191)	211,692	82,939
	$ 516,492	$ 523,473	$ 685,935	$ 541,668
	$(3,147,819)	$ 3,105,409	$ 509,418	$ 3,330,133
Interest expense:				
3½% debentures	$ 656,250	$ 875,000	$ 875,000	$ 656,250
Other interest	599,320	560,579	638,670	1,043,318
	$ 1,255,570	$ 1,435,579	$ 1,513,670	$ 1,699,568
Income or (loss) before provision for taxes on income	$(4,403,389)	$ 1,669,830	$(1,004,252)	$ 1,630,565
Provision for taxes on income or (refund):				
Federal	$ (700,000)	$ 500,000	$ (500,000)	$ 480,000
State and foreign	—	267,000	45,000	370,000
	$ (700,000)	$ 767,000	$ (455,000)	$ 850,000
Net income or (loss) for the period	$(3,703,389)	$ 902,830	$ (549,252)	$ 780,565
Accumulated earnings retained for reinvestment in the business at beginning of period	34,148,762	34,058,860	36,389,837	40,785,114
	$30,445,373	$34,961,690	$35,840,585	$ 41,565,679
Deduct:				
Cash dividends paid or declared:				
7% cumulative preferred stock $7.00 per share ($3.50 per share paid to July 31, 1956)	$ 325,171	$ 650,342	$ 650,342	$ 650,342
7% cumulative preferred stock $1.75 per share payable October 1, 1956 to holders of record September 12, 1956, and $1.75 per share payable January 3, 1956 to holders of record December 12, 1955	162,586	162,586	—	—
Common stock $.50 per share in 1954, and $2.00 per share in 1953	—	—	1,131,383	4,525,500
	$ 487,757	$ 812,928	$ 1,781,725	$ 5,175,842
Accumulated earnings retained for reinvestment in the business at end of period (Note 7)	$29,957,616	$34,148,762	$34,058,860	$ 36,389,837

[fol. 58]

J. I. CASE COMPANY

NOTES TO FINANCIAL STATEMENTS

1. BASIS OF TRANSLATION OF FOREIGN CURRENCY ITEMS:

The foreign currency assets and liabilities of branch houses included in the financial statements have been translated into U. S. currency on the following bases:

(a) Net current assets—at approximate official or other rates based upon subsequent realization or free rates as at the date of the financial statement.

(b) Properties—at the equivalent of U. S. dollar cost at date of purchase, less accrued depreciation in U. S. dollars upon such dollar cost.

The net assets of branch houses in foreign countries, stated in U. S. dollars, are as follows:

	July 31, 1956 (unaudited)	October 31, 1955
Canada	$14,020,741	$11,435,966
South America	3,130,928	3,928,224
Other foreign countries	2,486,270	2,441,491
	$19,637,939	$17,805,681

The major portion of these net assets is represented by net current assets and includes substantial amounts of accounts receivable collectible in U. S. dollars. Accounts receivable collectible in other currencies are subject to various restrictions.

The net profit or (loss) in respect of foreign branch houses included in the statement of income for the years included is as follows:

	July 31, 1956 (unaudited)	October 31, 1955	October 31, 1954	October 31, 1953
Canadian branches	$(120,176)	$(374,401)	$(375,217)	$ 460,829
South American branches	(407,045)	130,092	(360,573)	(423,142)

The unrealized exchange loss on the translation of the foreign currency net assets into U. S. dollars has been taken into profit and loss.

2. ESTIMATED DOUBTFUL ACCOUNTS:

Selling, distribution and administrative expense for the year ended October 31, 1955 includes a charge of $329,077 for bad debts. Of this amount $200,000 was credited to estimated doubtful accounts, thereby increasing the balance of this account from $500,000 at the beginning of the year to $700,000 at the end of the year. A similar provision of $225,000 is included in that classification for the nine-month period ended July 31, 1956 (unaudited). The latter provision may be subject to adjustment at the end of the fiscal year.

3. INVENTORIES:

Opening and closing inventories for the three fiscal years ended October 31, 1955 were determined by physical count at September 30 of the respective years adjusted for net transactions during the month of October in each year. In the absence of physical inventories since September 1955, the inventory amounts are those shown by the books. It is, of course, impossible to determine the net adjustment that would be required to the book records at July 31, 1956. However, based upon prior years' experience it is expected that no substantial adjustment will be required when physical inventories are taken as at September 30, 1956. Substantially all of the inventories, the aggregate amounts of which are shown below, are stated on the basis of "last-in first-out". As at July 31, 1956 the carrying value of inventories was approximately $10,000,000 below the company's standard costs. The amounts of inventories used in computing cost of goods sold were as follows:

October 31—	
1952	$70,127,994

into U. S. currency on the following bases:

(a) Net current assets—at approximate official or other rates based upon subsequent realization or free rates as at the date of the financial statement.

(b) Properties—at the equivalent of U. S. dollar cost at date of purchase, less accrued depreciation in U. S. dollars upon such dollar cost.

The net assets of branch houses in foreign countries, stated in U. S. dollars, are as follows:

	July 31, 1956 (unaudited)	October 31, 1955
Canada	$14,020,741	$11,435,966
South America	3,130,928	3,928,224
Other foreign countries	2,486,270	2,441,491
	$19,637,939	$17,805,681

The major portion of these net assets is represented by net current assets and includes substantial amounts of accounts receivable collectible in U. S. dollars. Accounts receivable collectible in other currencies are subject to various restrictions.

The net profit or (loss) in respect of foreign branch houses included in the statement of income for the years included is as follows:

	July 31, 1956 (unaudited)	October 31, 1955	October 31, 1954	October 31, 1953
Canadian branches	$(120,176)	$(374,401)	$(375,217)	$ 460,829
South American branches	(407,045)	130,092	(360,573)	(423,142)

The unrealized exchange loss on the translation of the foreign currency net assets into U. S. dollars has been taken into profit and loss.

2. Estimated Doubtful Accounts:

Selling, distribution and administrative expense for the year ended October 31, 1955 includes a charge of $329,077 for bad debts. Of this amount $200,000 was credited to estimated doubtful accounts, thereby increasing the balance of this account from $500,000 at the beginning of the year to $700,000 at the end of the year. A similar provision of $225,000 is included in that classification for the nine-month period ended July 31, 1956 (unaudited). The latter provision may be subject to adjustment at the end of the fiscal year.

[fol. 59]

3. Inventories:

Opening and closing inventories for the three fiscal years ended October 31, 1955 were determined by physical count at September 30 of the respective years adjusted for net transactions during the month of October in each year. In the absence of physical inventories since September 1955, the inventory amounts are those shown by the books. It is, of course, impossible to determine the net adjustment that would be required to the book records at July 31, 1956. However, based upon prior years' experience it is expected that no substantial adjustment will be required when physical inventories are taken as at September 30, 1956. Substantially all of the inventories, the aggregate amounts of which are shown below, are stated on the basis of "last-in first-out". As at July 31, 1956 the carrying value of inventories was approximately $10,000,000 below the company's standard costs. The amounts of inventories used in computing cost of goods sold were as follows:

October 31—	
1952	$70,127,994
1953	62,283,397
1954	49,275,080
1955	42,188,538
July 31, 1956 (estimated)	39,723,815

4. Depreciation and Maintenance and Repairs:

The provisions for depreciation on the properties were computed at the rates shown below applied to the gross asset balances at the beginning of the year, after eliminating fully depreciated items and assets retired during the year, and one-half of such rates applied to net additions during the year:

Description	Rate
Buildings and building equipment	2% to 10%
Machinery and equipment	8% to 25%
Patterns	8%
Office furniture and fixtures	8% and 10%
Automobiles (credited direct to asset account)	30%

In accordance with the policy of the company all expenditures for maintenance and repairs are charged to profit and loss and all additions and betterments are capitalized. Properties retired or otherwise disposed of are eliminated from the property accounts; the accumulated reserves for depreciation in respect thereof are eliminated from the respective reserve accounts; and profits or losses on properties retired or otherwise disposed of are credited or charged to profit and loss.

5. Patents, Designs, Devices, Etc.:

The patents, designs, devices, etc., are carried on the company's books at a nominal value of $1.00. The expenditures incurred annually in research and engineering work for the purpose of developing new machines and improving present products, including patent expenditures are charged to operations.

6. Capital Stock and Stock Options:

On October 2, 1952 the company granted to its officers and other management employees options to purchase in the aggregate 42,500 shares of the company's $12.50 par value common stock at a price of $24.25 per share, the market value on that date.

All options became exercisable on April 2, 1954, at which time the fair market value was $15.38 per share, and must be exercised on or before October 2, 1962. As at July 31, 1956 options to purchase 16,100 shares of common stock had lapsed, and no other options had been exercised.

7. Accumulated Earnings Retained:

Under the provisions of the indenture dated February 1, 1953, relating to the twenty-five year 3½% sinking fund debentures, $43,760,114 of accumulated earnings retained at October 31, 1955 were not available for the payment of dividends (other than stock dividends) on common stock and at July 31, 1956 none of the accumulated earnings retained were available for the payment of such dividends.

[fol. 60]

8. Pension System:

The company's pension system is entirely voluntary and may be amended, suspended or annulled at any time by the Board of Directors. There are no vested rights. In the opinion of company's counsel, there is no liability for past services and consequently no provision has been made therefor. Pension payments to retired employees amounted to approximately $360,000, $467,000 and $600,000 for the fiscal years ended October 31, 1953, 1954 and 1955, respectively, and $551,000 in the nine months ended July 31, 1956.

See also caption "Case Pension System" in this proxy statement.

9. SUPPLEMENTARY PROFIT AND LOSS INFORMATION:

	Charged directly to income		
	To costs or operating expenses	Other	Total
Nine months ended July 31, 1956 (unaudited):—			
Maintenance and repairs	$2,907,357	$113,081	$3,020,438
Depreciation	2,655,131	302,388	2,957,519
Taxes other than income taxes:			
Real estate and personal property taxes	496,484	251,584	748,068
Social security taxes	531,585	109,567	641,152
Other	19,907	58,717	78,624
Rents and royalties	15,171	41,948	57,119
Year ended October 31, 1955:—			
Maintenance and repairs	$2,999,040	$ 24,949	$3,023,989
Depreciation	3,404,946	429,568	3,834,514
Taxes other than income taxes:			
Real estate and personal property taxes	688,200	362,509	1,050,709
Social security taxes	591,122	146,175	737,297
Other	9,932	156,942	166,874
Rents and royalties	12,403	49,528	61,931
Year ended October 31, 1954:—			
Maintenance and repairs	$2,942,298	$ 14,995	$2,957,293
Depreciation	3,430,976	418,775	3,849,751
Taxes other than income taxes:			
Real estate and personal property taxes	611,943	357,639	969,582
Social security taxes	542,893	147,450	690,343
Other	3,219	156,411	159,630
Rents and royalties	19,419	60,287	79,706
Year ended October 31, 1953:—			
Maintenance and repairs	$4,681,497	$ 35,398	$4,716,895
Depreciation	3,349,800	479,386	3,829,186
Taxes other than income taxes:			
Real estate and personal property taxes	652,944	304,169	957,113
Social security taxes	617,443	151,938	769,381
Other	2,703	361,761	364,464
Rents and royalties	64,636	62,135	126,771

[fol. 61]

ACCOUNTANTS' CERTIFICATE

We have examined the statement of financial condition of American Tractor Corporation, Churubusco, Indiana (a New York corporation), as at August 31, 1955, and the statements of profit and loss, surplus and supplementary profit and loss information for the fiscal periods ended December 31, 1952, August 31, 1953, August 31, 1954 and August 31, 1955. We have reviewed the system of internal control and the accounting procedures of the company, and, without making a detailed audit of the transactions, have examined or tested accounting records and other supporting evidence by methods and to the extent we deemed appropriate. Our examination was made in accordance with generally accepted auditing standards applicable in the circumstances, and included all procedures which we deemed necessary.

In our opinion, the accompanying statement of financial condition and the related statements of profit and loss, surplus and supplementary profit and loss information present fairly the position of American Tractor Corporation at August 31, 1955, and the results of its operations for the fiscal periods above indicated, in conformity with generally accepted accounting principles applied on a consistent basis.

We have made a similar examination for the year ended December 31, 1951 and, in our opinion, the "Summary of Sales and Earnings" fairly summarizes the information set forth therein for the five fiscal periods from January 1, 1951, to August 31, 1955, in conformity with generally accepted accounting principles applied on a consistent basis.

We have made no verification of the financial statements to the extent they refer to periods and dates subsequent to August 31, 1955 and therefore express no opinion with regard thereto.

[fol. 62]

DETMER, LIPP AND COMPANY,
Certified Public Accountants.

Fort Wayne, Indiana.
November 8, 1955

AMERICAN TRACTOR CORPORATION, CHURUBUSCO, INDIANA

STATEMENT OF FINANCIAL CONDITION

As at August 31, 1955 and July 31, 1956

(See notes to financial statements)

ASSETS

	August 31, 1955	July 31, 1956 (Unaudited)
CURRENT ASSETS:		
Cash	$ 434,622	$ 281,356
Accounts and Notes Receivable—Trade (Note 1)	704,549	1,032,607
Merchandise Inventories (Note 2)	1,332,085	2,401,975
Prepaid Expenses	33,083	41,321
TOTAL CURRENT ASSETS	$2,504,339	$3,757,459
NON-CURRENT ASSETS	$ 7,134	$ 8,971
PROPERTY, PLANT AND EQUIPMENT (Note 3)	$ 778,955	$1,418,168
DEFERRED CHARGES:		
Deferred Original Engineering and Development Expense	$ 90,833	$ 72,500
Deferred Pattern and Die Expense	116,598	271,036
Other Deferred Charges	12,154	148,642
TOTAL DEFERRED CHARGES	$ 219,585	$ 492,178
TOTAL ASSETS	$3,510,013	$5,676,776

LIABILITIES

CURRENT LIABILITIES:		
Notes Payable—Bank (Note 4)	$ 385,252	$ 190,639
Real Estate Mortgage Payable—Bank (Note 5)	62,500	99,000
Real Estate Mortgages Payable—Other	3,404	—
Chattel Mortgages Payable	57,305	34,637
Accounts Payable—Trade	958,865	1,412,659
Notes Payable—Officers	—	140,000
Federal Income Taxes Payable	69,320	331,410
Other Accruals	130,556	141,778
TOTAL CURRENT LIABILITIES	$1,667,202	$2,350,123
LONG-TERM OBLIGATIONS:		
Notes Payable—Vendors	$ 69,028	$ —
Real Estate Mortgage Payable—Bank (Note 5)	432,500	801,000
Real Estate Mortgages Payable—Other (Note 6)	251,000	—
Chattel Mortgages Payable	22,488	—
Notes Payable—Officers	100,000	—
TOTAL LONG-TERM OBLIGATIONS	$ 875,016	$ 801,000
COMMITMENTS AND CONTINGENT LIABILITIES (Note 7)		
TOTAL LIABILITIES	$2,542,218	$3,151,123

STOCKHOLDERS' EQUITY

CAPITAL STOCK:		
Preferred (Note 8)	$ —	$1,250,000
Common (Note 9)	274,848	276,926
SURPLUS:		
Paid In	593,466	619,076
Earned (Note 10)	99,481	379,651
TOTAL STOCKHOLDERS' EQUITY	$ 967,795	$2,525,653
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	$3,510,013	$5,676,776

[fol. 63]

ASSETS

	August 31, 1968	July 31, 1969 (Unaudited)
Current Assets:		
Cash	$ 434,622	$ 281,556
Accounts and Notes Receivable—Trade (Note 1)	704,549	1,032,607
Merchandise Inventories (Note 2)	1,332,085	2,401,975
Prepaid Expenses	33,083	41,321
Total Current Assets	$2,504,339	$3,757,459
Non-Current Assets	$ 7,134	$ 8,971
Property, Plant and Equipment (Note 3)	$ 778,955	$1,418,168
Deferred Charges:		
Deferred Original Engineering and Development Expense	$ 90,833	$ 72,500
Deferred Pattern and Die Expense	116,598	271,036
Other Deferred Charges	12,154	148,642
Total Deferred Charges	$ 219,585	$ 492,178
Total Assets	$3,510,013	$5,676,776

LIABILITIES

Current Liabilities:		
Notes Payable—Bank (Note 4)	$ 385,252	$ 190,639
Real Estate Mortgage Payable—Bank (Note 5)	62,500	99,000
Real Estate Mortgages Payable—Other	3,404	—
Chattel Mortgages Payable	57,305	34,637
Accounts Payable—Trade	958,865	1,412,659
Notes Payable—Officers	—	140,000
Federal Income Taxes Payable	69,320	331,410
Other Accruals	130,556	141,778
Total Current Liabilities	$1,667,202	$2,350,123
Long-Term Obligations:		
Notes Payable—Vendors	$ 69,028	$ —
Real Estate Mortgage Payable—Bank (Note 5)	432,500	801,000
Real Estate Mortgages Payable—Other (Note 6)	251,000	—
Chattel Mortgages Payable	22,488	—
Notes Payable—Officers	100,000	—
Total Long-Term Obligations	$ 875,016	$ 801,000
Commitments and Contingent Liabilities (Note 7)		
Total Liabilities	$2,542,218	$3,151,123

STOCKHOLDERS' EQUITY

Capital Stock:		
Preferred (Note 8)	$ —	$1,250,000
Common (Note 9)	274,848	276,926
Surplus:		
Paid In	593,466	619,076
Earned (Note 10)	99,481	379,651
Total Stockholders' Equity	$ 967,795	$2,525,653
Total Liabilities and Stockholders' Equity	$3,510,013	$5,676,776

[fol. 63]

AMERICAN TRACTOR CORPORATION, CHURUBUSCO, INDIANA

ANALYSIS OF SURPLUS ACCOUNTS

For the Year Ended December 31, 1952, the Eight Months Period Ended August 31, 1953, the Years Ended August 31, 1954 and August 31, 1955, and the Eleven Months Period Ended July 31, 1956

	Year Ended December 31, 1952	Eight Months Period Ended August 31, 1953	Year Ended August 31, 1954	Year Ended August 31, 1955	Eleven Months Period Ended July 31, 1956 (Unaudited)
PAID IN SURPLUS:					
Balance at Beginning of Year	$ —	$ 69,300	$ 85,562	$ 500,405	$593,466
Add:					
Excess of proceeds over par value from sale of capital stock (23,100 shares in 1952; 16,595 shares in 1953; 1,600 shares in 1954; 27,000 shares in 1955; 8,314 shares in 1956)	69,300	19,262	3,300	93,061	25,110
Reduction in par value of common stock from $2.00 to $.50 per share on 239,895 shares then outstanding	—	—	359,843	—	—
Excess of par value of preferred stock converted to 100,000 shares of common stock	—	—	50,000	—	—
Stock purchase warrants sold on common stock (170,000 shares in 1954, 50,000 shares in 1956)	—	—	1,700	—	500
	$ 69,300	$ 88,562	$ 500,405	$ 593,466	$619,076
Less:					
Premium paid on repurchase of 1,000 shares of common stock	—	3,000	—	—	—
BALANCE AT CLOSE OF YEAR	$ 69,300	$ 85,562	$ 500,405	$ 593,466	$619,076
EARNED SURPLUS:					
Balance at Beginning of Year	$ 49,542	$ 8,384	$ (80,430)	$(247,301)	$ 99,481
Add:					
Net Profit or (Loss) for the Year	(39,908)	(88,814)	(166,871)	346,782	306,211
	$ 9,634	$(80,430)	$(247,301)	$ 99,481	$405,692
Deduct:					
Dividends Paid on Preferred Stock	1,250	—	—	—	26,041

[fol. 64]

	Year Ended December 31, 1952	Eight Months Period Ended August 31, 1953	Year Ended August 31, 1954	Year Ended August 31, 1955	Eleven Months Period Ended July 31, 1956 (Unaudited)
PAID IN SURPLUS:					
Balance at Beginning of Year	$ —	$ 69,300	$ 85,562	$ 500,405	$593,466
Add:					
Excess of proceeds over par value from sale of capital stock (23,100 shares in 1952; 16,595 shares in 1953; 1,600 shares in 1954; 27,000 shares in 1955; 8,314 shares in 1956)	69,300	19,262	3,300	93,061	25,110
Reduction in par value of common stock from $2.00 to $.50 per share on 239,895 shares then outstanding	—	—	359,843	—	—
Excess of par value of preferred stock converted to 100,000 shares of common stock	—	—	50,000	—	—
Stock purchase warrants sold on common stock (170,000 shares in 1954, 50,000 shares in 1956)	—	—	1,700	—	500
	$ 69,300	$ 88,562	$ 500,405	$ 593,466	$619,076
Less:					
Premium paid on repurchase of 1,000 shares of common stock	—	3,000	—	—	—
BALANCE AT CLOSE OF YEAR	$ 69,300	$ 85,562	$ 500,405	$ 593,466	$619,076
EARNED SURPLUS:					
Balance at Beginning of Year	$ 49,542	$ 8,384	$ (80,430)	$(247,301)	$ 99,481
Add:					
Net Profit or (Loss) for the Year	(39,908)	(88,814)	(166,871)	346,782	306,211
	$ 9,634	$(80,430)	$(247,301)	$ 99,481	$405,692
Deduct:					
Dividends Paid on Preferred Stock	1,250	—	—	—	26,041
BALANCE AT CLOSE OF YEAR	$ 8,384	$(80,430)	$(247,301)	$ 99,481	$379,651

[fol. 64]

AMERICAN TRACTOR CORPORATION, CHURUBUSCO, INDIANA

COMPARATIVE STATEMENT OF PROFIT AND LOSS

For the Year Ended December 31, 1952, the Eight Months Period Ended August 31, 1953, the Years Ended August 31, 1954 and August 31, 1955, and the Eleven Months Period Ended July 31, 1956

(See notes to financial statements)

	Year Ended December 31, 1952	Eight Months Period Ended August 31, 1953	Year Ended August 31, 1954	Year Ended August 31, 1955	Eleven Months Period Ended July 31, 1956*** (Unaudited)
NET SALES	$3,455,713	$1,701,863	$2,264,237	$5,279,628	$9,177,007
COST OF SALES:					
Inventory—Beginning of Period	$ 731,814	$ 805,753	$ 649,610	$ 674,839	$1,317,859
Material Purchases	2,556,554	1,005,486	1,382,295	3,652,355	6,337,648
Direct Labor	102,437	54,869	140,935	384,342	666,213
Factory Expenses	591,731	328,675	495,946	784,843	1,482,230
	$3,982,536	$2,194,783	$2,668,786	$5,496,379	$9,803,950
Inventory—End of Period	805,753	649,610	674,839	1,317,859	2,362,121
Total Cost of Sales	$3,176,783	$1,545,173	$1,993,947	$4,178,520	$7,441,829
GROSS PROFIT ON SALES	$ 278,930	$ 156,690	$ 270,290	$1,101,108	$1,735,178
SELLING, GENERAL AND ADMINISTRATIVE EXPENSES	329,339	224,038	381,470	633,049	1,042,508
NET OPERATING PROFIT OR (LOSS)	$ (50,409)	$ (67,348)	$ (111,180)	$ 468,059	$ 692,670
OTHER INCOME	10,287	3,011	6,131	17,803	74,802
	$ (40,122)	$ (64,337)	$ (105,049)	$ 485,862	$ 767,472
OTHER DEDUCTIONS:					
Provision for Doubtful Accounts	$ 402	$ 9,406	$ 29,907	$ 5,995	$ —
Interest and Debt Expense	23,971	15,071	31,789	62,446	120,750
Miscellaneous	—	—	126	1,319	9,101
Total Other Deductions	$ 24,373	$ 24,477	$ 61,822	$ 69,760	$ 129,851
NET PROFIT OR (LOSS) BEFORE FEDERAL INCOME TAXES	$ (64,495)	$ (88,814)	$ (166,871)	$ 416,102	$ 637,621
FEDERAL INCOME TAXES	24,587*	—	—	69,320**	331,410
NET PROFIT OR (LOSS)	$ (39,908)	$ (88,814)	$ (166,871)	$ 346,782	$ 306,211

[fol. 65]

* Denotes loss carry-back tax refund.

** The federal income tax for the year ended August 31, 1955 is $127,610 less than the tax normally applicable to net profit for that

(See notes to financial statements)

	Year Ended December 31, 1952	Eight Months Period Ended August 31, 1953	Year Ended August 31, 1954	Year Ended August 31, 1955	Eleven Months Period Ended July 31, 1956*** (Unaudited)
NET SALES	$3,455,713	$1,701,863	$2,264,237	$5,279,628	$9,177,007
COST OF SALES:					
Inventory—Beginning of Period	$ 731,814	$ 805,753	$ 649,610	$ 674,839	$1,317,859
Material Purchases	2,556,554	1,005,486	1,382,295	3,652,355	6,337,648
Direct Labor	102,437	54,869	140,935	384,342	666,213
Factory Expenses	591,731	328,675	495,946	784,843	1,482,230
	$3,982,536	$2,194,783	$2,668,786	$5,496,379	$9,803,950
Inventory—End of Period	805,753	649,610	674,839	1,317,859	2,362,121
Total Cost of Sales	$3,176,783	$1,545,173	$1,993,947	$4,178,520	$7,441,829
GROSS PROFIT ON SALES	$ 278,930	$ 156,690	$ 270,290	$1,101,108	$1,735,178
SELLING, GENERAL AND ADMINISTRATIVE EXPENSES	329,339	224,038	381,470	633,049	1,042,508
NET OPERATING PROFIT OR (LOSS)	$ (50,409)	$ (67,348)	$ (111,180)	$ 468,059	$ 692,670
OTHER INCOME	10,287	3,011	6,131	17,803	74,802
	$ (40,122)	$ (64,337)	$ (105,049)	$ 485,862	$ 767,472
OTHER DEDUCTIONS:					
Provision for Doubtful Accounts	$ 402	$ 9,406	$ 29,907	$ 5,995	$ —
Interest and Debt Expense	23,971	15,071	31,789	62,446	120,750
Miscellaneous	—	—	126	1,319	9,101
Total Other Deductions	$ 24,373	$ 24,477	$ 61,822	$ 69,760	$ 129,851
NET PROFIT OR (LOSS) BEFORE FEDERAL INCOME TAXES	$ (64,495)	$ (88,814)	$ (166,871)	$ 416,102	$ 637,621
FEDERAL INCOME TAXES	24,587*	—	—	69,320**	331,410
NET PROFIT OR (LOSS)	$ (39,908)	$ (88,814)	$ (166,871)	$ 346,782	$ 306,211

[fol. 65]

* Denotes loss carry-back tax refund.

** The federal income tax for the year ended August 31, 1955 is $127,610 less than the tax normally applicable to net profit for that year, due to the net operating loss carry-over from prior periods.

*** Unaudited period. All known adjustments necessary to a fair statement of the operating results for the said period have been included.

AMERICAN TRACTOR CORPORATION, CHURUBUSCO, INDIANA

SUPPLEMENTARY PROFIT AND LOSS INFORMATION

For the Year Ended December 31, 1952, The Eight Months Period Ended August 31, 1953, the Years Ended August 31, 1954 and August 31, 1955, and the Eleven Months Period Ended July 31, 1956

COLUMN A	COLUMN B		COLUMN C		COLUMN D
	Charged directly to profit and loss		Charged to other accounts		
	(1)	(2)	(1)	(2)	
Item	To cost of goods sold or operating expenses	Other	Account	Amount	Total
1. MAINTENANCE AND REPAIRS					
Year Ended December 31, 1952	$ 21,839	$ 68		None	$ 21,907
Eight Months Ended August 31, 1953	7,754	216		None	7,970
Year Ended August 31, 1954	21,689	337		None	22,026
Year Ended August 31, 1955	44,926	448		None	45,374
*Eleven Months Ended July 31, 1956	129,990	4,227		None	134,217
2. DEPRECIATION, DEPLETION, AMORTIZATION OF FIXED AND INTANGIBLE ASSETS (Note 3)					
Year Ended December 31, 1952	$ 14,458	$ 4,274		None	$ 18,732
Eight Months Ended August 31, 1953	14,427	3,446		None	17,873
Year Ended August 31, 1954	27,263	6,214		None	33,477
Year Ended August 31, 1955	42,019	7,482		None	49,501
*Eleven Months Ended July 31, 1956	52,566	10,228		None	62,794
3. TAXES OTHER THAN INCOME AND EXCESS PROFITS TAXES					
Year Ended December 31, 1952	$ 21,850	$11,632		None	$ 33,482
Eight Months Ended August 31, 1953	12,553	8,622		None	21,175
Year Ended August 31, 1954	25,646	13,182		None	38,828
Year Ended August 31, 1955	32,546	16,076		None	48,622
*Eleven Months Ended July 31, 1956	65,162	32,555		None	97,717
(Comprised almost entirely of regularly recurring payroll and property taxes)					
4. MANAGEMENT AND SERVICE CONTRACT FEES					
Year Ended December 31, 1952	None	None		None	None
Eight Months Ended August 31, 1953	None	None		None	None
Year Ended August 31, 1954	None	None		None	None
Year Ended August 31, 1955	None	None		None	None
*Eleven Months Ended July 31, 1956	None	None		None	None
5. RENTS AND ROYALTIES					
Year Ended December 31, 1952	$ 4,015	None		None	$ 4,015
Eight Months Ended August 31, 1953	3,000	None		None	3,000
Year Ended August 31, 1954	3,895	None		None	3,895
Year Ended August 31, 1955	2,204	None		None	2,204
*Eleven Months Ended July 31, 1956	60,837	5,902		None	66,739
6. AMORTIZATION OF ORIGINAL ENGINEERING AND DEVELOPMENT COST					
Year Ended December 31, 1952	$ 20,000	None		None	$ 20,000
Eight Months Ended August 31, 1953	13,333	None		None	13,333

[fol. 66]

Item	COLUMN A	COLUMN B Charged directly to profit and loss (1) To cost of goods sold or operating expenses	COLUMN B Charged directly to profit and loss (2) Other	COLUMN C Charged to other accounts (1) Account	COLUMN C Charged to other accounts (2) Amount	COLUMN D Total
1.	MAINTENANCE AND REPAIRS					
	Year Ended December 31, 1952	$ 21,839	$ 68		None	$ 21,907
	Eight Months Ended August 31, 1953	7,754	216		None	7,970
	Year Ended August 31, 1954	21,689	337		None	22,026
	Year Ended August 31, 1955	44,926	448		None	45,374
	*Eleven Months Ended July 31, 1956	129,990	4,227		None	134,217
2.	DEPRECIATION, DEPLETION, AMORTIZATION OF FIXED AND INTANGIBLE ASSETS (Note 3)					
	Year Ended December 31, 1952	$ 14,458	$ 4,274		None	$ 18,732
	Eight Months Ended August 31, 1953	14,427	3,446		None	17,873
	Year Ended August 31, 1954	27,263	6,214		None	33,477
	Year Ended August 31, 1955	42,019	7,482		None	49,501
	*Eleven Months Ended July 31, 1956	52,566	10,228		None	62,794
3.	TAXES OTHER THAN INCOME AND EXCESS PROFITS TAXES					
	Year Ended December 31, 1952	$ 21,850	$11,632		None	$ 33,482
	Eight Months Ended August 31, 1953	12,553	8,622		None	21,175
	Year Ended August 31, 1954	25,646	13,182		None	38,828
	Year Ended August 31, 1955	32,546	16,076		None	48,622
	*Eleven Months Ended July 31, 1956	65,162	32,555		None	97,717
	(Comprised almost entirely of regularly recurring payroll and property taxes)					
4.	MANAGEMENT AND SERVICE CONTRACT FEES					
	Year Ended December 31, 1952	None	None	None		None
	Eight Months Ended August 31, 1953	None	None	None		None
	Year Ended August 31, 1954	None	None	None		None
	Year Ended August 31, 1955	None	None	None		None
	*Eleven Months Ended July 31, 1956	None	None	None		None
5.	RENTS AND ROYALTIES					
	Year Ended December 31, 1952	$ 4,015	None	None		$ 4,015
	Eight Months Ended August 31, 1953	3,000	None	None		3,000
	Year Ended August 31, 1954	3,895	None	None		3,895
	Year Ended August 31, 1955	2,204	None	None		2,204
	*Eleven Months Ended July 31, 1956	60,837	5,902	None		66,739
6.	AMORTIZATION OF ORIGINAL ENGINEERING AND DEVELOPMENT COST					
	Year Ended December 31, 1952	$ 20,000	None	None		$ 20,000
	Eight Months Ended August 31, 1953	13,333	None	None		13,333
	Year Ended August 31, 1954	20,000	None	None		20,000
	Year Ended August 31, 1955	20,000	None	None		20,000
	*Eleven Months Ended July 31, 1956	18,333	None	None		18,333

Tooling is amortized equally over two to four year periods from date of acquisition. Subsequent engineering and development expense is charged off as incurred, or, when deferred until new models are introduced for sale, then immediately charged off in the year of such introduction.

* Unaudited period.

[fol. 66]

AMERICAN TRACTOR CORPORATION, CHURUBUSCO, INDIANA

NOTES TO FINANCIAL STATEMENTS

As at August 31, 1955 and July 31, 1956

1. Accounts and notes receivable are shown net after a reserve for doubtful accounts of $10,000. Accounts aggregating $462,067 at August 31, 1955 and $361,176 at July 31, 1956 had been pledged to secure bank loans.

2. Merchandise inventories are valued at cost, on first-in, first-out method. Opening and closing inventories for each of the periods reflected by the financial statements were determined by physical count of all merchandise at the close of each period, except at July 31, 1956, on which date only finished tractors were counted and book figures were used to represent the value of raw materials, parts and supplies then on hand.

The operating results for the eleven month period ended July 31, 1956 may be affected by the physical inventory taken August 31, 1956 which has not yet been evaluated and reconciled with the books of account. Such year end adjustments of book value to physical inventory values have not been material in amount in past years.

The inventory is classified as follows:

	8/31/55	7/31/56
Finished Tractors and Accessories	$ 75,636	$ 475,939
Steel	168,154	222,700
Other Raw Materials and Parts	1,074,069	1,632,332
Shop Supplies and Miscellaneous	14,226	71,004
	$1,332,085	$2,401,975

3. Property, plant and equipment costs and accumulated depreciation are summarized hereunder:

	1955	1956	Depreciation Rates Per Annum
Land	$ 21,506	$ 21,506	—
Buildings	269,975	645,330	3%
Building construction in progress	165,644	321,867	—
Land improvements	19,227	50,996	10
Furniture and fixtures	55,655	91,991	10
Machinery and equipment	299,398	397,596	10
Autos, trucks and tractors	56,692	54,527	25
Total Cost	$888,097	$1,583,813	
Less: Accumulated depreciation	109,142	165,645	
Net Depreciated Value	$778,955	$1,418,168	

All expenditures for maintenance and repairs are charged to profit and loss as incurred. Additions and betterments are capitalized. Properties retired or otherwise disposed of are removed from the property accounts and the accumulated depreciation thereon is eliminated from the respective depreciation reserve accounts. Gains or losses resulting from retirements or dispositions of fixed assets are credited or charged to profit and loss.

All fixed assets were mortgaged to secure the indebtedness owing to The Marine Midland Trust Company of New York, and Edward L. Elliott, or order, at August 31, 1955, and are mortgaged to secure the indebtedness owing to The Marine Midland Trust Company of New York, at July 31, 1956, referred to hereinafter under notes 5 and 6.

4. Represents principally, notes owing to The Marine Midland Trust Company of New York, secured by pledges of accounts receivable aggregating $462,067 at August 31, 1955 and $361,176 at July 31, 1956.

5. Due to The Marine Midland Trust Company of New York, secured by a first real estate mortgage on plant and plant site, and by a chattel mortgage on all machinery owned or hereafter acquired. $900,000 balance at July 31, 1956 is payable $9,000 per month for twelve months, commencing September 30, 1956, $16,500 per month for next year, $18,000 per month thereafter. Interest payable monthly in addition at rate of 5% per annum on reducing principal. Accelerated principal payments, equal to 25% of net profits after taxes for the last preceding fiscal year, are payable commencing November 30, 1957 and each year thereafter. Such accelerated annual payments shall not exceed the aggregate amount of monthly principal payments required in each such preceding fiscal year

[fol. 67]

2. Merchandise inventories are valued at cost, on last-in, first-out method. Opening and closing inventories for each of the periods reflected by the financial statements were determined by physical count of all merchandise at the close of each period, except at July 31, 1956, on which date only finished tractors were counted and book figures were used to represent the value of raw materials, parts and supplies then on hand.

The operating results for the eleven month period ended July 31, 1956 may be affected by the physical inventory taken August 31, 1956 which has not yet been evaluated and reconciled with the books of account. Such year end adjustments of book value to physical inventory values have not been material in amount in past years.

The inventory is classified as follows:

	8/31/55	7/31/56
Finished Tractors and Accessories	$ 75,636	$ 475,939
Steel	168,154	222,700
Other Raw Materials and Parts	1,074,069	1,632,332
Shop Supplies and Miscellaneous	14,226	71,004
	$1,332,085	$2,401,975

3. Property, plant and equipment costs and accumulated depreciation are summarized hereunder:

	1955	1956	Depreciation Rates Per Annum
Land	$ 21,506	$ 21,506	—
Buildings	269,975	645,330	3%
Building construction in progress	165,644	321,867	—
Land improvements	19,227	50,996	10
Furniture and fixtures	55,655	91,991	10
Machinery and equipment	299,398	397,596	10
Autos, trucks and tractors	56,692	54,527	25
Total Cost	$888,097	$1,583,813	
Less: Accumulated depreciation	109,142	165,645	
Net Depreciated Value	$778,955	$1,418,168	

All expenditures for maintenance and repairs are charged to profit and loss as incurred. Additions and betterments are capitalized. Properties retired or otherwise disposed of are removed from the property accounts and the accumulated depreciation thereon is eliminated from the respective depreciation reserve accounts. Gains or losses resulting from retirements or dispositions of fixed assets are credited or charged to profit and loss.

All fixed assets were mortgaged to secure the indebtedness owing to The Marine Midland Trust Company of New York, and Edward L. Elliott, or order, at August 31, 1955, and are mortgaged to secure the indebtedness owing to The Marine Midland Trust Company of New York, at July 31, 1956, referred to hereinafter under notes 5 and 6.

4. Represents principally, notes owing to The Marine Midland Trust Company of New York, secured by pledges of accounts receivable aggregating $462,067 at August 31, 1955 and $361,176 at July 31, 1956.

5. Due to The Marine Midland Trust Company of New York, secured by a first real estate mortgage on plant and plant site, and by a chattel mortgage on all machinery owned or hereafter acquired. $900,000 balance at July 31, 1956 is payable $9,000 per month for twelve months, commencing September 30, 1956, $16,500 per month for next year, $18,000 per month thereafter. Interest payable monthly in addition at rate of 5% per annum on reducing principal. Accelerated principal payments, equal to 25% of net profits after taxes for the last preceding fiscal year, are payable commencing November 30, 1957 and each year thereafter. Such accelerated annual payments shall not exceed the aggregate amount of monthly principal payments required in each such preceding fiscal year.

6. Principally comprised of $250,000 owing to Edward L. Elliott, or order, of New York, secured by second mortgage on all fixed assets of the company.

[fol. 67]

AMERICAN TRACTOR CORPORATION, CHURUBUSCO, INDIANA

NOTES TO FINANCIAL STATEMENTS—(Continued)

7. No provision is made in the statement of financial condition for approximately $95,000 in liabilities at August 31, 1955, and approximately $50,000 in liabilities at July 31, 1956, under new building construction contracts for work not completed on the respective dates.

   No liability is reflected in the statement of financial condition for the balance of approximately $542,000 owing at July 31, 1956, or $712,000 at September 30, 1956, due in future periods under leases of machinery and equipment, which leases also contain options to purchase. Fixed rentals hereafter are estimated to average $213,000 per annum during the terms of the leases in effect. Such rentals paid in eleven months ended July 31, 1956 have been charged to operating expenses. Conditional sales contracts in the amount of $1,522,061, on which the company is contingently liable for $1,199,044, had been sold to The Marine Midland Trust Company of New York at July 31, 1956.

8. The authorized preferred capital stock is comprised of 250,000 shares of $20 par value, 5% convertible, cumulative, of which 62,500 shares were issued and outstanding at July 31, 1956.

   12,500 of such outstanding preferred shares may be converted into common stock at the conversion price of $20.00 per share of common stock, and 50,000 outstanding preferred shares may be converted into 62,500 shares of common stock at the conversion price of $16.00 per share.

   The issued and outstanding shares are callable at any time on 30 day notice at $21.00 per share, have priority over common stock, and are entitled to $21.00 per share in event of voluntary liquidation or dissolution, and $20.00 per share in event of involuntary liquidation or dissolution.

9. The authorized common capital stock is comprised of 2,000,000 shares of 25¢ par value, of which 1,099,390 shares at August 31, 1955, and 1,107,704 shares at July 31, 1956, were issued and outstanding.

   During the period from October 12, 1953 (Mr. Milligan's date of employment), to July 31, 1956, an aggregate of 10,000 shares of common stock was issued to D. A. Milligan, Vice President in Charge of Sales, as compensation pursuant to his employment contract. The market price for such shares at the time of issue ranged from $3.50 to $14 per share. 2,000 shares, then having market price of approximately $12 per share, were issued to him on October 12, 1956. His employment contract has been cancelled.

   All options heretofore granted to key employees have been cancelled without exercise. 2,317 shares were issued to general employees pursuant to an Employees Stock Purchase Plan, cancelled on October 4, 1956. The prices paid ranged from approximately $11.50 to $13 per share.

   75,000 shares of authorized but unissued common capital stock were reserved at July 31, 1956 for conversion privileges of preferred stock shareholders, and 90,000 shares were reserved at July 31, 1956 for issuance upon the exercise of 50,000 common stock purchase warrants entitling each warrant to purchase 1 4/5 shares of unissued common stock at $16.00 per share.

10. The loan agreements applicable to the indebtedness referred to under Notes 4, 5 and 6 contain certain restrictions which prohibit payment of dividends on common capital stock while any portion of such indebtedness remains unpaid. No liability has been shown for accumulated preferred stock dividends, not declared, amounting to $5,208 at July 31, 1956.

[fol. 68]

J. I. CASE COMPANY

PRO FORMA BALANCE SHEET JULY 31, 1956 (Unaudited)

(Giving effect to the Merger of J. I. Case Company and American Tractor Corporation)

See notes and explanations attached

	J. I. Case Company	American Tractor Corporation	Pro Forma Adjustments add or (deduct)	Pro Forma Combined July 31, 1956
CURRENT ASSETS:				
Cash	$ 4,659,794	$ 281,556	($ 1,312,500)	$ 3,628,850
Notes and accounts receivable, less reserve	69,418,566	1,032,607		70,451,173
Inventories	39,723,815	2,401,975		42,125,790
	$113,802,175	$3,716,138	($ 1,312,500)	$116,205,813
OTHER ASSETS	$ 264,354	$ 8,971		$ 273,325
PROPERTY, PLANT AND EQUIPMENT, Net of Accumulated Depreciation:				
Land	$ 2,364,417	$ 21,505		$ 2,385,922
Land improvements	—	44,131		44,131
Buildings and building equipment	12,064,302	611,315	$ 994,634	13,670,251
Machinery and equipment	14,564,459	324,372	469,305	15,358,136
Patterns	1,076,140	—		1,076,140
Furniture and fixtures	811,623	72,261	(1,025)	882,859
Autos, trucks, tractors and planes	216,275	74,502	10,346	301,123
Construction in progress	895,008	321,867		1,216,875
	$ 31,992,224	$1,469,953	$ 1,473,260	$ 34,935,437
PREPAID EXPENSES, PATENTS AND DEFERRED CHARGES:				
Prepaid insurance premiums, etc.	$ 909,653	$ 41,321		$ 950,974
Patents, designs, devices, etc.	1	—		1
Engineering and development expense	—	72,500		72,500
Pattern and die expense	—	271,036		271,036
Other deferred charges	—	96,857		96,857
	$ 909,654	$ 481,714		$ 1,391,368
EXCESS OF COST OF ASSETS ACQUIRED				

[fol. 70]

	Company	Corporation	add or (deduct)	1956
CURRENT ASSETS:				
Cash	$ 4,659,794	$ 281,556	($ 1,312,500)	$ 3,628,850
Notes and accounts receivable, less reserve	69,418,566	1,032,607		70,451,173
Inventories	39,723,815	2,401,975		42,125,790
	$113,802,175	$3,716,138	($ 1,312,500)	$116,205,813
OTHER ASSETS	$ 264,354	$ 8,971		$ 273,325
PROPERTY, PLANT AND EQUIPMENT, Net of Accumulated Depreciation:				
Land	$ 2,364,417	$ 21,505		$ 2,385,922
Land improvements	—	44,131		44,131
Buildings and building equipment	12,064,302	611,315	$ 994,634	13,670,251
Machinery and equipment	14,564,459	324,372	469,305	15,358,136
Patterns	1,076,140	—		1,076,140
Furniture and fixtures	811,623	72,261	(1,025)	882,859
Autos, trucks, tractors and planes	216,275	74,502	10,346	301,123
Construction in progress	895,008	321,867		1,216,875
	$ 31,992,224	$1,469,953	$ 1,473,260	$ 34,935,437
PREPAID EXPENSES, PATENTS AND DEFERRED CHARGES:				
Prepaid insurance premiums, etc.	$ 909,653	$ 41,321		$ 950,974
Patents, designs, devices, etc.	1	—		1
Engineering and development expense	—	72,500		72,500
Pattern and die expense	—	271,036		271,036
Other deferred charges	—	96,857		96,857
	$ 909,654	$ 481,714		$ 1,391,368
EXCESS OF COST OF ASSETS ACQUIRED OVER ASSIGNED VALUE THEREOF (Note 5)	$ —	$ —	$11,990,665	$ 11,990,665
	$146,968,407	$5,676,776	$12,151,425	$164,796,608

J. I. CASE COMPANY

PRO FORMA BALANCE SHEET JULY 31, 1956 (Unaudited)

(Giving effect to the Merger of J. I. Case Company and American Tractor Corporation)

See notes and explanations attached

	J. I. Case Company	American Tractor Corporation	Pro Forma Adjustments add or (deduct)	Pro Forma Combined July 31, 1956
CURRENT LIABILITIES:				
Notes payable to banks	$ 27,450,000	$ 190,639		$ 27,640,639
Current instalments on long-term debt	—	99,000		99,000
Other notes payable	—	174,637		174,637
Accounts payable	2,539,465	1,412,659		3,952,124
Accrued liabilities	594,573	141,778		736,351
Dividend payable on preferred stock	162,586	—		162,586
Federal and other taxes on income	705,678	331,410		1,037,088
	$ 31,452,302	$2,350,123		$ 33,802,425
LONG-TERM DEBT:				
3½% sinking fund debentures due February 1, 1978 (annual sinking fund payments of $630,000 commence in 1958)	$ 25,000,000	$ —		$ 25,000,000
Real estate mortgage payable	—	801,000		801,000
	$ 25,000,000	$ 801,000		$ 25,801,000
STOCKHOLDERS' EQUITY (Note 3):				
Preferred Stock:				
7% cumulative, $100 par value	$ 9,290,600	$ —		$ 9,290,600
Issued—92,906 shares				
6½% second cumulative, $7 par value	—	—	$ 7,753,928	7,753,928
Issued — 1,107,704 shares				
5% convertible, $20 par value	—	1,250,000	(1,250,000)	—
Common Stock:				
$12.50 par value	28,284,575	—	6,923,150	35,207,725
Issued—				
Before merger 2,262,766 shares				
After merger 2,816,618 shares				
$.25 par value	—	276,926	(276,926)	—
Capital contributed by stockholders in excess of par value of securities	10,008,314	619,076	(619,076)	10,008,314
Accumulated earnings retained for reinvestment in the business including, for J. I. Case Company, inventory loss and contingency reserves aggregating $12,975,000	12,032,516	370,551	(370,551)	12,032,516

[fol. 71]

	J. I. Case Company	Tractor Corporation	Adjustments add or (deduct)	July 31, 1956
CURRENT LIABILITIES:				
Notes payable to banks	$ 27,450,000	$ 190,639		$ 27,640,639
Current instalments on long-term debt	—	99,000		99,000
Other notes payable	—	174,637		174,637
Accounts payable	2,539,465	1,412,659		3,952,124
Accrued liabilities	594,573	141,778		736,351
Dividend payable on preferred stock	162,586	—		162,586
Federal and other taxes on income	705,678	331,410		1,037,088
	$ 31,452,302	$2,350,123		$ 33,802,425
LONG-TERM DEBT:				
3½% sinking fund debentures due February 1, 1978 (annual sinking fund payments of $630,000 commence in 1958)	$ 25,000,000	$ —		$ 25,000,000
Real estate mortgage payable	—	801,000		801,000
	$ 25,000,000	$ 801,000		$ 25,801,000
STOCKHOLDERS' EQUITY (Note 3):				
Preferred Stock:				
7% cumulative, $100 par value	$ 9,290,600	$ —		$ 9,290,600
Issued—92,906 shares				
6½% second cumulative, $7 par value	—	—	$ 7,753,928	7,753,928
Issued — 1,107,704 shares				
5% convertible, $20 par value	—	1,250,000	(1,250,000)	—
Common Stock:				
$12.50 par value	28,284,575	—	6,923,150	35,207,725
Issued—				
Before merger 2,262,766 shares				
After merger 2,816,618 shares				
$.25 par value	—	276,926	(276,926)	—
Capital contributed by stockholders in excess of par value of securities	10,008,314	619,076	(619,076)	10,008,314
Accumulated earnings retained for reinvestment in the business including, for J. I. Case Company, inventory loss and contingency reserves aggregating $12,975,000	42,932,616	379,651	(379,651)	42,932,616
	$ 90,516,105	$2,525,653	$12,151,425	$105,193,183
Contingent liabilities and commitments (Note 4)				
	$146,968,407	$5,676,776	$12,151,425	$164,796,608

J. I. CASE COMPANY

NOTES TO TRANSACTIONS GIVEN EFFECT TO IN PRO FORMA BALANCE SHEET as at July 31, 1956 (Unaudited)

1. The foregoing pro forma balance sheet as at July 31, 1956 has been prepared from the unaudited balance sheets of J. I. Case Company and American Tractor Corporation set forth in more detail elsewhere in this proxy statement, and should be read in conjunction with those balance sheets and notes thereto. The pro forma balance sheet does not reflect the possible exercise of outstanding ATC stock purchase warrants and stock options or the conversion of outstanding shares of ATC Convertible Preferred Stock Series 55-1 and 56-1. Such pro forma balance sheet at July 31, 1956 gives effect to the following transactions relating to the merger of J. I. Case Company and American Tractor Corporation, all as more fully described elsewhere herein:

a. The outstanding shares of 5% Convertible Preferred Stock of ATC will be redeemed at a price of $21 per share.

b. The Board of Directors of Case has determined that the minimum fair value of the net assets of ATC to be acquired in the merger is $14,757,068. Based upon the number of shares of ATC Common Stock outstanding on July 31, 1956, and giving effect to the exchange of one share of new 6½ per cent Second Cumulative Preferred Stock and one-half share of Common Stock for each share of ATC Common Stock then outstanding, the following records the issuance of Case Preferred and Common Stocks:

1,107,704 shares of 6½% Second Cumulative Preferred Stock, $7 par value	$ 7,753,928
553,852 shares of Common Stock, $12.50 par value	6,923,150
	$14,677,078

The net assets of ATC will become the net assets of Case.

c. The property, plant and equipment of ATC were valued by the Board of Directors of Case on the basis of an appraisal by the firm of W. F. MacConnell & Co. of Cincinnati, Ohio. The property, plant and equipment of ATC which will become assets of Case are restated to give effect to the net increase in value as set forth in that appraisal.

2. On September 24, 1956 Case purchased 50,000 shares of 5% Convertible Preferred Stock, Series 56-2 of ATC at $20 per share and 50,000 common stock purchase warrants at one cent each. The subsequent redemption of such 5% Cumulative Preferred Stock, Series 56-2 and cancellation of the warrants, pursuant to the plan of merger, will have no effect on the accompanying pro forma balance sheet.

3. For information regarding restriction on payment of dividends on common stock and revision of Case stock option plan, see captions "Certain Further Restrictions" and "Stock Option" respectively.

4. Case had no significant commitments or contingent liabilities at July 31, 1956 or September 30, 1956. Information regarding commitments and contingent liabilities of ATC at July 31, 1956 and September 30, 1956 is set forth in Note 7 to ATC financial statements in this proxy statement.

5. The Case management will adopt a plan of amortization, over some period not in excess of 20 years, of the Excess of Cost of Assets Acquired Over Assigned Value Thereof starting with the fiscal year beginning November 1, 1957. Such plan will provide for annual charges determined by the extent of the accomplished degree of integration of the companies' operations.

EXHIBIT A

PLAN OF MERGER

CERTIFICATE OF CONSOLIDATION

of

AMERICAN TRACTOR CORPORATION

and

J. I. CASE COMPANY

into

J. I. CASE COMPANY

(Pursuant to Section 91 of the Stock Corporation Law of New York.)

ARTICLES OF MERGER

of

AMERICAN TRACTOR CORPORATION

into

J. I. CASE COMPANY

(Pursuant to Section 180.68 of Wisconsin Statutes 1955)

[fol. 73]

J. I. CASE COMPANY (hereinafter sometimes called "the Corporation"), a Wisconsin corporation, and AMERICAN TRACTOR CORPORATION (hereinafter sometimes called "ATC"), a New York corporation, desiring to effect the merger of ATC into the Corporation pursuant to the provisions of Section 180.68 of the Wisconsin Statutes 1955 and the consolidation of ATC with the Corporation pursuant to the provisions of Section 91 of the Stock Corporation Law of New York, and the Boards of Directors of each such corporation having adopted a Plan of Merger as set forth and included in these Articles of Merger and Certificate of Consolidation, their respective Presidents or one of their respective Vice Presidents and their respective Secretaries or one of their respective Assistant Secretaries do hereby certify:

Article 1. Corporations Proposing to Merge and Consolidate. The corporations to be

of

AMERICAN TRACTOR CORPORATION

and

J. I. CASE COMPANY

into

J. I. CASE COMPANY

(Pursuant to Section 91 of the Stock Corporation Law of New York)

ARTICLES OF MERGER

of

AMERICAN TRACTOR CORPORATION

into

J. I. CASE COMPANY

(Pursuant to Section 180.68 of Wisconsin Statutes 1955)

[fol. 73]

J. I. CASE COMPANY (hereinafter sometimes called "the Corporation"), a Wisconsin corporation, and AMERICAN TRACTOR CORPORATION (hereinafter sometimes called "ATC"), a New York corporation, desiring to effect the merger of ATC into the Corporation pursuant to the provisions of Section 180.68 of the Wisconsin Statutes 1955 and the consolidation of ATC with the Corporation pursuant to the provisions of Section 91 of the Stock Corporation Law of New York, and the Boards of Directors of each such corporation having adopted a Plan of Merger as set forth and included in these Articles of Merger and Certificate of Consolidation, their respective Presidents or one of their respective Vice Presidents and their respective Secretaries or one of their respective Assistant Secretaries do hereby certify:

Article 1. Corporations Proposing to Merge and Consolidate. The corporations to be included in the merger and consolidation are J. I. Case Company, a Wisconsin corporation, and American Tractor Corporation, a New York corporation. J. I. Case Company, a Wisconsin corporation and one of the constituent corporations, will survive the merger and consolidation. The name of such surviving corporation will continue to be "J. I. Case Company" and its principal office will continue to be at 700 State Street, Racine, Wisconsin.

J. I. Case Company was incorporated under the laws of the State of Wisconsin on February 25, 1880 as J. I. Case Threshing Machine Company, and was authorized to do business in the State of New York by certificate of authority of the Secretary of State of New York dated February 18, 1907.

The Certificate of Incorporation of American Tractor Corporation, which was incorporated under the Stock Corporation Law of New York as Washington Tractor & Farm Equipment Corp., was filed in the office of the Secretary of State of New York on July 19, 1948.

Article 2. Outstanding Shares of the Corporation and ATC. The Corporation had outstanding as of the date of the meeting of its stockholders to act on this merger and consolidation a total of 2,355,672 shares of capital stock, divided into 2,262,766 shares of Common Stock, par value $12.50 a share, and 92,906 shares of 7% Cumulative Preferred Stock, par value $100 a share. As of the date of filing these Articles of Merger and Certificate of Consolidation the Corporation had outstanding a total of 2,355,672 shares of capital stock, divided into 2,262,766 shares of Common Stock and 92,906 shares of 7% Cumulative Preferred Stock.

ATC had outstanding as of the date of the meeting of the stockholders to act on this merger and consolidation a total of shares of capital stock, divided into shares of Common Stock, par value 25¢ a share, and shares of Convertible Preferred Stock, Series 55-1, 56-1 and 56-2. The shares of Common Stock were entitled to vote on the merger and consolidation. Prior to the effective date of this merger and consolidation ATC will have redeemed all its outstanding shares of Convertible Preferred Stock, Series 55-1, 56-1 and 56-2. Accordingly, under the terms of the Certificate of Incorporation, as amended, of ATC such shares were not part of the capital stock of ATC entitled to vote on this merger and consolidation. As of the date of filing these Articles of Merger and Certificate of Consolidation ATC had outstanding a total of shares of Common Stock.

Article 3. Changes in the Articles of Association of the Corporation. The following changes in the Articles of Association of the Corporation, the surviving corporation, are to be effected by this merger and consolidation:

(a) The provisions of Article 1 following the initial paragraph thereof are amended to read as follows:

"The business and purposes of such corporation are and shall be:

To manufacture, purchase, sell and repair all kinds of agricultural machinery, tools, implements, and farm equipment; all kinds of engines, motors, tractors, road machinery, wagons, motor vehicles, and other vehicles; all devices, attachments and equipment used or intended for use in connection therewith, and to produce, manufacture, buy, sell and deal in any and all materials used in connection with their manufacture, and to engage in any other lawful business for any purpose whatever for which corporations may be organized under Chapter 180, Wisconsin Business Corporation Law.

To apply for, obtain, register, lease or otherwise acquire, and to hold, use, own, operate, sell, license, assign or otherwise dispose of any trademarks, trade names, patents, inventions, improvements, processes and formulae used or usable in connection with the manufacture, production, sale or repair of any articles.

To engage in any and all lawful business whenever necessary, convenient or incidental to the exercise or attainment of any of the powers or purposes hereinbefore specified, excepting such as is forbidden by law.

The corporation shall have power to conduct its business in any of the states, territories or colonial possessions of the United States [illegible]

[fol. 74]

Article 2. Outstanding Shares of the Corporation and ATC. The Corporation had outstanding as of the date of the meeting of its stockholders to act on this merger and consolidation a total of 2,355,672 shares of capital stock, divided into 2,262,766 shares of Common Stock, par value $12.50 a share, and 92,906 shares of 7% Cumulative Preferred Stock, par value $100 a share. As of the date of filing these Articles of Merger and Certificate of Consolidation the Corporation had outstanding a total of 2,355,672 shares of capital stock, divided into 2,262,766 shares of Common Stock and 92,906 shares of 7% Cumulative Preferred Stock.

ATC had outstanding as of the date of the meeting of the stockholders to act on this merger and consolidation a total of shares of capital stock, divided into shares of Common Stock, par value 25¢ a share, and shares of Convertible Preferred Stock, Series 55-1, 56-1 and 56-2. The shares of Common Stock were entitled to vote on the merger and consolidation. Prior to the effective date of this merger and consolidation ATC will have redeemed all its outstanding shares of Convertible Preferred Stock, Series 55-1, 56-1 and 56-2. Accordingly, under the terms of the Certificate of Incorporation, as amended, of ATC such shares were not part of the capital stock of ATC entitled to vote on this merger and consolidation. As of the date of filing these Articles of Merger and Certificate of Consolidation ATC had outstanding a total of shares of Common Stock.

Article 3. Changes in the Articles of Association of the Corporation. The following changes in the Articles of Association of the Corporation, the surviving corporation, are to be effected by this merger and consolidation:

(a) The provisions of Article 1 following the initial paragraph thereof are amended to read as follows:

"The business and purposes of such corporation are and shall be:

To manufacture, purchase, sell and repair all kinds of agricultural machinery, tools, implements, and farm equipment; all kinds of engines, motors, tractors, road machinery, wagons, motor vehicles, and other vehicles; all devices, attachments and equipment used or intended for use in connection therewith, and to produce, manufacture, buy, sell and deal in any and all materials used in connection with their manufacture, and to engage in any other lawful business for any purpose whatever for which corporations may be organized under Chapter 180, Wisconsin Business Corporation Law.

To apply for, obtain, register, lease or otherwise acquire, and to hold, use, own, operate, sell, license, assign or otherwise dispose of any trademarks, trade names, patents, inventions, improvements, processes and formulae used or usable in connection with the manufacture, production, sale or repair of any articles.

To engage in any and all lawful business whenever necessary, convenient or incidental to the exercise or attainment of any of the powers or purposes hereinbefore specified, excepting such as is forbidden by law.

The corporation shall have power to conduct its business in any of the states, territories or colonial possessions of the United States and in foreign countries, and to have one or more offices outside of the state of Wisconsin; and to hold, purchase, mortgage and convey real and personal property both in and out of the state of Wisconsin."

(b) Article 3 is amended to read as follows:

"The capital stock of this corporation shall consist of an aggregate of Five Million Four Hundred One Thousand Eight Hundred Twenty-Five (5,401,825) shares of capital stock, divided into One Hundred One Thousand Eight Hundred Twenty-Five (101,825) shares of Preferred Stock, par value One Hundred Dollars ($100) each, One Million Three Hundred Thousand (1,300,000) shares of 6½% Second Cumulative Preferred Stock, par value Seven Dollars ($7) each, and Four Million (4,000,000) shares of Common Stock, par value Twelve Dollars and Fifty Cents ($12.50) each.

The holders of the Preferred Stock shall be entitled to receive, when and as declared, from the surplus or net profits of the corporation, yearly dividends at the rate of seven per centum per annum, and no more, payable quarter-yearly on dates to be fixed by the By-laws. The dividends on the Preferred Stock shall be cumulative, and shall be payable before any dividends on the 6½% Second Cumulative Preferred Stock or on the Common Stock shall be paid or set apart, so that, if in any year dividends amounting to seven per centum shall not have been paid on the Preferred Stock, the deficiency shall be payable before any dividend shall be paid upon or set apart for the 6½% Second Cumulative Preferred Stock or for the Common Stock.

The holders of the 6½% Second Cumulative Preferred Stock shall be entitled to receive, when and as declared, from the surplus or net profits of the corporation, yearly dividends at the rate of six and one-half per centum, per annum, and no more, payable quarter-yearly on dates to be fixed by the By-laws. The dividends on the 6½% Second Cumulative Preferred Stock shall be cumulative, and shall be payable before any dividends on the Common Stock shall be paid or set apart, so that, if in any year dividends amounting to six and one-half per centum shall not have been paid thereon, the deficiency shall be payable before any dividend shall be paid upon or set apart for the Common Stock. Cash dividends on the 6½% Second Cumulative Preferred Stock shall accrue from the date of issue, if that be a dividend date, and otherwise from a date five days after the approval of the merger of American Tractor Corporation into the corporation by the stockholders of both such companies. Whenever all cumulative dividends on the Preferred Stock for all previous years shall have been declared and shall have become payable, and the accrued quarter-yearly installments on such stock for the current year shall have been declared, and the Company shall have paid such cumulative dividends for previous years and such accrued quarter-yearly installments, or shall have set aside from its surplus or net profits a sum sufficient for the payment thereof, the Board of Directors may declare dividends on the 6½% Second Cumulative Preferred Stock, payable then or thereafter, out of any remaining surplus or net profits.

Whenever all cumulative dividends on the Preferred Stock and the 6½% Second Cumulative Preferred Stock for all previous years shall have been declared and shall have become payable, and the accrued quarter-yearly installments for the current year shall have been declared, and the Company shall have paid such cumulative dividends for previous years and such accrued quarter-yearly installments, or shall have set aside from its surplus or net profits a sum sufficient for the payment thereof, the Board of Directors may declare dividends on the Common Stock, payable then or thereafter, out of any remaining surplus or net profits.

In the event of any liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation, the holders of the Preferred Stock shall be entitled to

[fol. 75]

The holders of the Preferred Stock shall be entitled to receive, when and as declared, from the surplus or net profits of the corporation, yearly dividends at the rate of seven per centum per annum, and no more, payable quarter-yearly on dates to be fixed by the By-laws. The dividends on the Preferred Stock shall be cumulative, and shall be payable before any dividends on the 6½% Second Cumulative Preferred Stock or on the Common Stock shall be paid or set apart, so that, if in any year dividends amounting to seven per centum shall not have been paid on the Preferred Stock, the deficiency shall be payable before any dividend shall be paid upon or set apart for the 6½% Second Cumulative Preferred Stock or for the Common Stock.

The holders of the 6½% Second Cumulative Preferred Stock shall be entitled to receive, when and as declared, from the surplus or net profits of the corporation, yearly dividends at the rate of six and one-half per centum, per annum, and no more, payable quarter-yearly on dates to be fixed by the By-laws. The dividends on the 6½% Second Cumulative Preferred Stock shall be cumulative, and shall be payable before any dividends on the Common Stock shall be paid or set apart, so that, if in any year dividends amounting to six and one-half per centum shall not have been paid thereon, the deficiency shall be payable before any dividend shall be paid upon or set apart for the Common Stock. Cash dividends on the 6½% Second Cumulative Preferred Stock shall accrue from the date of issue, if that be a dividend date, and otherwise from a date five days after the approval of the merger of American Tractor Corporation into the corporation by the stockholders of both such companies. Whenever all cumulative dividends on the Preferred Stock for all previous years shall have been declared and shall have become payable, and the accrued quarter-yearly installments on such stock for the current year shall have been declared, and the Company shall have paid such cumulative dividends for previous years and such accrued quarter-yearly installments, or shall have set aside from its surplus or net profits a sum sufficient for the payment thereof, the Board of Directors may declare dividends on the 6½% Second Cumulative Preferred Stock, payable then or thereafter, out of any remaining surplus or net profits.

Whenever all cumulative dividends on the Preferred Stock and the 6½% Second Cumulative Preferred Stock for all previous years shall have been declared and shall have become payable, and the accrued quarter-yearly installments for the current year shall have been declared, and the Company shall have paid such cumulative dividends for previous years and such accrued quarter-yearly installments, or shall have set aside from its surplus or net profits a sum sufficient for the payment thereof, the Board of Directors may declare dividends on the Common Stock, payable then or thereafter, out of any remaining surplus or net profits.

In the event of any liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation, the holders of the Preferred Stock shall be entitled to be paid in full both the par amount of their shares and the unpaid dividends accrued

[fol. 75]

thereon, before any amount shall be paid to the holders of the 6½% Second Cumulative Preferred Stock or of the Common Stock; and after the payment to the holders of the Preferred Stock of its par value, and the unpaid accrued dividends thereon, the holders of the 6½% Second Cumulative Preferred Stock shall be entitled in the event of voluntary liquidation or dissolution or winding up to the amount of Seven Dollars and Thirty-five Cents ($7.35) on their shares and in the event of involuntary liquidation or dissolution or winding up to the par amount of their shares, in each case with the amount of unpaid dividends accrued thereon, before any amount shall be paid to the holders of the Common Stock; and after such payments to the holders of Preferred Stock and 6½% Second Cumulative Preferred Stock the remaining assets and funds shall be divided and paid to the holders of the Common Stock according to their respective shares.

Except as provided below, the corporation may redeem at its option the whole or any part (pro rata or by lot) of the 6½% Second Cumulative Preferred Stock outstanding at any time by paying therefor in cash Seven Dollars and Thirty-five Cents ($7.35) per share plus accrued unpaid dividends thereon to the date fixed for such redemption (herein called the "redemption price"), by mailing notice of such redemption to the holders of record of such 6½% Second Cumulative Preferred Stock so to be redeemed at their respective addresses as the same may appear on the books of the corporation as of a date, not more than fifty days prior to the redemption date, as shall be established by the Board of Directors of the corporation. Such notice shall specify the time and place of redemption and shall be mailed at least thirty days prior to the date specified therein for redemption. So long as any shares of Preferred Stock are outstanding the corporation will not redeem any shares of 6½% Second Cumulative Preferred Stock unless all dividends upon the Preferred Stock and the full dividends for the then current quarterly dividend period thereon shall have been paid or declared and a sum sufficient for the payment thereof set apart. Unless all dividends upon 6½% Second Cumulative Preferred Stock shall have been paid and the full dividends thereon for the then current quarterly dividend period shall have been paid or declared and a sum sufficient for the payment thereof set apart, the corporation shall not redeem less than all outstanding shares of 6½% Second Cumulative Preferred Stock.

If the aforesaid notice of redemption of shares of 6½% Second Cumulative Preferred Stock shall have been duly given, and if on or before the redemption date the funds necessary for such redemption shall have been set aside by the corporation, separate and apart from its other funds, in trust for the pro rata benefit of the holders of shares so called for redemption, then, notwithstanding that any certificate for shares of 6½% Second Cumulative Preferred Stock so called for redemption shall not have been surrendered for cancellation, the shares represented thereby shall not be deemed outstanding, dividends thereon shall cease to accrue from and after the redemption date, and all rights with respect to such 6½% Second Cumulative Preferred Stock so called for redemption shall forthwith after such redemption date cease and determine, except only the right to receive the redemption price therefor, but without interest; and if on or before the redemption date the corporation shall deposit in trust with any bank or trust company in the United States having a capital and undivided surplus of at least three million dollars ($3,000,000) to be applied to the redemption of the shares of 6½% Second Cumulative Preferred Stock so called for redemption, funds sufficient for such redemption, and shall have given notice of redemption

Thirty-five Cents ($7.35) on their shares and in the event of involuntary liquidation or dissolution or winding up to the par amount of their shares, in each case with the amount of unpaid dividends accrued thereon, before any amount shall be paid to the holders of the Common Stock; and after such payments to the holders of Preferred Stock and 6½% Second Cumulative Preferred Stock the remaining assets and funds shall be divided and paid to the holders of the Common Stock according to their respective shares.

Except as provided below, the corporation may redeem at its option the whole or any part (pro rata or by lot) of the 6½% Second Cumulative Preferred Stock outstanding at any time by paying therefor in cash Seven Dollars and Thirty-five Cents ($7.35) per share plus accrued unpaid dividends thereon to the date fixed for such redemption (herein called the "redemption price"), by mailing notice of such redemption to the holders of record of such 6½% Second Cumulative Preferred Stock so to be redeemed at their respective addresses as the same may appear on the books of the corporation as of a date, not more than fifty days prior to the redemption date, as shall be established by the Board of Directors of the corporation. Such notice shall specify the time and place of redemption and shall be mailed at least thirty days prior to the date specified therein for redemption. So long as any shares of Preferred Stock are outstanding the corporation will not redeem any shares of 6½% Second Cumulative Preferred Stock unless all dividends upon the Preferred Stock and the full dividends for the then current quarterly dividend period thereon shall have been paid or declared and a sum sufficient for the payment thereof set apart. Unless all dividends upon 6½% Second Cumulative Preferred Stock shall have been paid and the full dividends thereon for the then current quarterly dividend period shall have been paid or declared and a sum sufficient for the payment thereof set apart, the corporation shall not redeem less than all outstanding shares of 6½% Second Cumulative Preferred Stock.

If the aforesaid notice of redemption of shares of 6½% Second Cumulative Preferred Stock shall have been duly given, and if on or before the redemption date the funds necessary for such redemption shall have been set aside by the corporation, separate and apart from its other funds, in trust for the pro rata benefit of the holders of shares so called for redemption, then, notwithstanding that any certificate for shares of 6½% Second Cumulative Preferred Stock so called for redemption shall not have been surrendered for cancellation, the shares represented thereby shall not be deemed outstanding, dividends thereon shall cease to accrue from and after the redemption date, and all rights with respect to such 6½% Second Cumulative Preferred Stock so called for redemption shall forthwith after such redemption date cease and determine, except only the right to receive the redemption price therefor, but without interest; and if on or before the redemption date the corporation shall deposit in trust with any bank or trust company in the United States having a capital and undivided surplus of at least three million dollars ($3,000,000) to be applied to the redemption of the shares of 6½% Second Cumulative Preferred Stock so called for redemption, funds sufficient for such redemption, and shall have given notice of redemption as aforesaid or shall have given the bank or trust company irrevocable authority to give such notice, then from and after the date of such deposit all rights of holders of the 6½% Second Cumulative Preferred Stock so called for redemption shall cease, except the right

to receive the redemption price therefor, but without interest. Any interest accrued on such funds shall be paid to the corporation. Any funds so set aside or deposited and unclaimed at the end of six years from such redemption date shall be released and repaid to the corporation, and such holders of such 6½% Second Cumulative Preferred Stock so called for redemption as shall not have received the redemption price prior to such release and repayment to the corporation shall look only to the corporation for payment thereof without interest.

No dividend upon the Common Stock in excess of six per centum per annum shall be declared or paid, if thereby the assets of the corporation applicable to the payment of dividends, as determined by the Board of Directors, shall be reduced to an amount less than Two Million Dollars ($2,000,000).

There are hereby reserved for issuance and sale under any stock option plan, as adopted and as amended by the stockholders by a majority of the votes cast at any properly constituted meeting of stockholders, 250,000 shares of Common Stock of the corporation, par value Twelve Dollars and Fifty Cents ($12.50) each (except that in the event of any change in the number of outstanding shares of Common Stock of the corporation by reason of split-ups or combinations of shares, or recapitalizations, or by reason of stock dividends, the number of shares so reserved may be adjusted so as to reflect such change); and no stockholder shall be entitled as a matter of right to subscribe for, purchase or receive any shares of Common Stock so reserved or have any preemptive or preferential right to subscribe for or purchase the same."

(c) The first paragraph of Article 4 is amended to read as follows:

"The general officers of this corporation shall be a Chairman of the Board, a President, one or more Vice-Presidents, a Secretary and a Treasurer. The number of directors shall be fixed by the By-laws, but such number shall not be more than fifteen until the date of the annual meeting of the stockholders of the corporation scheduled to be held in the corporation's fiscal year ending October 31, 1957."

(d) The second paragraph of Article 7 is amended to read as follows:

"At every meeting of stockholders each holder of Preferred Stock shall be entitled to eight votes in person or by proxy, and each holder of Common Stock shall be entitled to one vote in person or by proxy, for each share of the capital stock standing in the name of such stockholder on the books of the Company, except where a date shall have been fixed as a record date for the determination of stockholders entitled to vote as hereinafter provided. The By-laws may fix or authorize the Board of Directors to fix in advance a date not exceeding thirty (30) days preceding the date of any meeting of stockholders, or the date for the payment of any dividend, or the date for the allotment of rights, or the date when any change, conversion or exchange of capital stock shall go into effect, as a record date for the determination of the stockholders entitled to notice of and to vote at any such meeting, or entitled to receive payment of any such dividend, or entitled to any such allotment of rights, or to exercise the rights in respect of any such change, conversion or exchange of capital stock; and in such case only such stockholders as shall be stockholders of record at the close of business on the date so fixed shall be entitled to such notice of and to vote at such meeting, or to receive such allotment of rights,

release and repayment to the corporation shall look only to the corporation for payment thereof without interest.

No dividend upon the Common Stock in excess of six per centum per annum shall be declared or paid, if thereby the assets of the corporation applicable to the payment of dividends, as determined by the Board of Directors, shall be reduced to an amount less than Two Million Dollars ($2,000,000).

There are hereby reserved for issuance and sale under any stock option plan, as adopted and as amended by the stockholders by a majority of the votes cast at any properly constituted meeting of stockholders, 250,000 shares of Common Stock of the corporation, par value Twelve Dollars and Fifty Cents ($12.50) each (except that in the event of any change in the number of outstanding shares of Common Stock of the corporation by reason of split-ups or combinations of shares, or recapitalizations, or by reason of stock dividends, the number of shares so reserved may be adjusted so as to reflect such change); and no stockholder shall be entitled as a matter of right to subscribe for, purchase or receive any shares of Common Stock so reserved or have any preemptive or preferential right to subscribe for or purchase the same."

(c) The first paragraph of Article 4 is amended to read as follows:

"The general officers of this corporation shall be a Chairman of the Board, a President, one or more Vice-Presidents, a Secretary and a Treasurer. The number of directors shall be fixed by the By-laws, but such number shall not be more than fifteen until the date of the annual meeting of the stockholders of the corporation scheduled to be held in the corporation's fiscal year ending October 31, 1957."

(d) The second paragraph of Article 7 is amended to read as follows:

"At every meeting of stockholders each holder of Preferred Stock shall be entitled to eight votes in person or by proxy, and each holder of Common Stock shall be entitled to one vote in person or by proxy, for each share of the capital stock standing in the name of such stockholder on the books of the Company, except where a date shall have been fixed as a record date for the determination of stockholders entitled to vote as hereinafter provided. The By-laws may fix or authorize the Board of Directors to fix in advance a date not exceeding thirty (30) days preceding the date of any meeting of stockholders, or the date for the payment of any dividend, or the date for the allotment of rights, or the date when any change, conversion or exchange of capital stock shall go into effect, as a record date for the determination of the stockholders entitled to notice of and to vote at any such meeting, or entitled to receive payment of any such dividend, or entitled to any such allotment of rights, or to exercise the rights in respect of any such change, conversion or exchange of capital stock; and in such case only such stockholders as shall be stockholders of record at the close of business on the date so fixed shall be entitled to such notice of and to vote at such meeting, or to receive such allotment of rights, or to exercise such rights, as the case may be, notwithstanding any transfer of any stock on the books of the corporation after any such record date fixed as aforesaid. In the event that six quarterly dividends on the 6½% Second Cumulative Preferred Stock, whether or not consecutive, shall be unpaid, in whole or in part, the holders of the outstanding 6½%

[fol. 77]

Second Cumulative Preferred Stock, voting separately as a class, shall be entitled at the next annual meeting to elect two directors. Such voting power shall so continue to vest in the 6½% Second Cumulative Preferred Stock until all arrears in payment of quarterly dividends thereon shall have been paid and the dividends thereon for the current quarter shall have been declared and funds for the payment thereof set apart, and upon the happening of such event the 6½% Second Cumulative Preferred Stock shall be divested of such voting power, but subject always to the same provisions for the vesting of such voting power in the 6½% Second Cumulative Preferred Stock in the case of any similar future default.

At any annual meeting at which the 6½% Second Cumulative Preferred Stock shall be entitled to elect directors, the holders of a majority in interest of the then outstanding 6½% Second Cumulative Preferred Stock, whether present in person or by proxy, shall constitute a quorum for that purpose, and a plurality of the votes of the 6½% Second Cumulative Preferred Stock at such a meeting at which such a quorum is present shall be sufficient to elect the directors whom the holders of 6½% Second Cumulative Preferred Stock are entitled to elect. The persons so elected as directors, together with the directors elected by the Preferred and Common Stock, shall constitute the Board of Directors of the corporation.

No amendment, alteration or repeal of the Articles of Association or of the By-laws of the corporation which materially adversely affects the preferences, privileges or voting powers of the Preferred Stock or the 6½% Second Cumulative Preferred Stock shall be made without the favorable vote of at least two-thirds in interest of the outstanding shares of the class of stock so affected, voting as a class."

Article 4. Directors of the Surviving Corporation. Upon the merger becoming effective, the following persons shall become directors of the Corporation, to serve until the first annual meeting of stockholders of the Corporation to be held after the merger has become effective and until their successors shall be duly elected and qualified:

Messrs. A. O. Choate, William Ewing, L. R. Clausen, H. S. Sturgis, C. M. Robertson, Frederick Nymeyer, John T. Brown, H. G. Barr, Wm. J. Grede, E. P. Hamilton, Wm. B. Peters, Allan B. Kline, Marc B. Rojtman, Edward L. Elliott and Mentor Kraus.

Article 5. Terms and Conditions of the Merger and Consolidation, Conversion of Shares, etc. The terms and conditions of the merger and consolidation, the mode of carrying the same into effect, and the manner and basis of converting the shares of ATC into shares of the Corporation are as follows:

(a) Each of the issued and outstanding shares of Common Stock of ATC shall upon the effectiveness of this merger and consolidation, except as provided below, automatically and without any action on the part of the holder thereof be converted into and be deemed to be (i) one-half of one share of Common Stock of the Corporation and (ii) one share of 6½% Second Cumulative Preferred Stock, par value $7 a share, of the Corporation. Each holder of shares of Common Stock of ATC, upon surrender to the Corporation's duly authorized agent of one or more certificates for such shares for cancellation, shall thereafter be entitled to receive certificates representing the number of shares of Common Stock and 6½% Second Cumulative Preferred Stock of the Corporation to which such holder is entitled as above provided. No fractional shares of Common Stock of the Cor-

[fol. 78]

voting power in ... 6½ % Second Cumulative ... Stock in the ... as ... any similar future default.

At any annual meeting at which the 6½ % Second Cumulative Preferred Stock shall be entitled to elect directors, the holders of a majority in interest of the then outstanding 6½ % Second Cumulative Preferred Stock, whether present in person or by proxy, shall constitute a quorum for that purpose, and a plurality of the votes of the 6½ % Second Cumulative Preferred Stock at such a meeting at which such a quorum is present shall be sufficient to elect the directors whom the holders of 6½ % Second Cumulative Preferred Stock are entitled to elect. The persons so elected as directors, together with the directors elected by the Preferred and Common Stock, shall constitute the Board of Directors of the corporation.

No amendment, alteration or repeal of the Articles of Association or of the By-laws of the corporation which materially adversely affects the preferences, privileges or voting powers of the Preferred Stock or the 6½ % Second Cumulative Preferred Stock shall be made without the favorable vote of at least two-thirds in interest of the outstanding shares of the class of stock so affected, voting as a class."

Article 4. Directors of the Surviving Corporation. Upon the merger becoming effective, the following persons shall become directors of the Corporation, to serve until the first annual meeting of stockholders of the Corporation to be held after the merger has become effective and until their successors shall be duly elected and qualified:

Messrs. A. O. Choate, William Ewing, L. R. Clausen, H. S. Sturgis, C. M. Robertson, Frederick Nymeyer, John T. Brown, H. G. Barr, Wm. J. Grede, E. P. Hamilton, Wm. B. Peters, Allan B. Kline, Marc B. Rojtman, Edward L. Elliott and Mentor Kraus.

[fol. 78]

Article 5. Terms and Conditions of the Merger and Consolidation, Conversion of Shares, etc. The terms and conditions of the merger and consolidation, the mode of carrying the same into effect, and the manner and basis of converting the shares of ATC into shares of the Corporation are as follows:

(a) Each of the issued and outstanding shares of Common Stock of ATC shall upon the effectiveness of this merger and consolidation, except as provided below, automatically and without any action on the part of the holder thereof be converted into and be deemed to be (i) one-half of one share of Common Stock of the Corporation and (ii) one share of 6½ % Second Cumulative Preferred Stock, par value $7 a share, of the Corporation. Each holder of shares of Common Stock of ATC, upon surrender to the Corporation's duly authorized agent of one or more certificates for such shares for cancellation, shall thereafter be entitled to receive certificates representing the number of shares of Common Stock and 6½ % Second Cumulative Preferred Stock of the Corporation to which such holder is entitled as above provided. No fractional shares of Common Stock of the Corporation shall be issued pursuant to this paragraph (a). In lieu of such a fractional share the Corporation shall at its election deliver to any registered holder of a number of shares of Common Stock of ATC which is not evenly divisible by two (i) $7.00 in cash or

(ii) non-voting and non-dividend bearing scrip certificates (exchangeable within such period as may be fixed by the Board of Directors of the Corporation, upon surrender thereof with other scrip certificates aggregating one or more full shares, for stock certificates for the full number of shares of Common Stock of the Corporation represented) for such fraction, in such form and containing such terms and conditions as the Board of Directors may approve.

(b) Unless and until any outstanding certificates of Common Stock of ATC shall be surrendered for exchange, no dividend payable to holders of record of Common Stock or 6½% Second Cumulative Preferred Stock of the Corporation shall be paid to the holders of such outstanding certificates on account thereof, but upon surrender of such certificates of Common Stock of ATC there shall be paid to the record holder of the certificates for the Common Stock and 6½% Second Cumulative Preferred Stock of the Corporation, into which such shares shall have been changed, all dividends which have become payable thereon.

(c) Each of the outstanding Warrants to purchase Common Stock of ATC shall upon the effectiveness of the merger and consolidation, except as provided below, automatically and without any action on the part of the holder thereof be converted into and be deemed to be a Warrant entitling the holder to purchase (i) in lieu of each full share of Common Stock of ATC, the following for a price of $16: (A) one-half of one share of Common Stock of the Corporation, and (B) one share of 6½% Second Cumulative Preferred Stock of the Corporation; and (ii) in lieu of any fraction of a share of Common Stock of ATC, a corresponding fraction of the above combination of Common Stock and 6½% Second Cumulative Preferred Stock at a corresponding fraction of the price of $16. Warrants may be combined to permit the purchase of full shares. No fractional shares of Common Stock or 6½% Second Cumulative Preferred Stock of the Corporation shall be issued on the exercise of such Warrants. In the event that any person exercising such Warrants would otherwise become entitled to a fractional share of such Common Stock or such 6½% Second Cumulative Preferred Stock, the Corporation may, at its election, in lieu thereof (i) pay an amount in cash equal to such fraction multiplied by the market value of such Common Stock or 6½% Second Cumulative Preferred Stock, as the case may be, at the close of business on the day of surrender of the Warrant, or (ii) issue non-voting and non-dividend bearing scrip certificates (similar to those provided in paragraph (a) above) for such fraction of Common Stock or 6½% Second Cumulative Preferred Stock. Upon the effectiveness of the merger and consolidation all Warrants held by the Corporation shall be terminated.

Article 6. Stockholder Votes. (a) Of the shares of Common Stock and the shares of 7% Cumulative Preferred Stock of the Corporation outstanding and entitled to vote on the merger and consolidation, shares of Common Stock and shares of 7% Cumulative Preferred Stock were voted for and shares of Common Stock and shares of 7% Cumulative Preferred Stock were voted against the merger and consolidation.

(b) Of the shares of capital stock of ATC outstanding and entitled to vote on the merger and consolidation, shares were voted for and shares were

[fol. 79]

surrendered for exchange, no dividend payable to holders of record of Common Stock or 6½% Second Cumulative Preferred Stock of the Corporation shall be paid to the holders of such outstanding certificates on account thereof, but upon surrender of such certificates of Common Stock of ATC there shall be paid to the record holder of the certificates for the Common Stock and 6½% Second Cumulative Preferred Stock of the Corporation, into which such shares shall have been changed, all dividends which have become payable thereon.

(c) Each of the outstanding Warrants to purchase Common Stock of ATC shall upon the effectiveness of the merger and consolidation, except as provided below, automatically and without any action on the part of the holder thereof be converted into and be deemed to be a Warrant entitling the holder to purchase (i) in lieu of each full share of Common Stock of ATC, the following for a price of $16: (A) one-half of one share of Common Stock of the Corporation, and (B) one share of 6½% Second Cumulative Preferred Stock of the Corporation; and (ii) in lieu of any fraction of a share of Common Stock of ATC, a corresponding fraction of the above combination of Common Stock and 6½% Second Cumulative Preferred Stock at a corresponding fraction of the price of $16. Warrants may be combined to permit the purchase of full shares. No fractional shares of Common Stock or 6½% Second Cumulative Preferred Stock of the Corporation shall be issued on the exercise of such Warrants. In the event that any person exercising such Warrants would otherwise become entitled to a fractional share of such Common Stock or such 6½% Second Cumulative Preferred Stock, the Corporation may, at its election, in lieu thereof (i) pay an amount in cash equal to such fraction multiplied by the market value of such Common Stock or 6½% Second Cumulative Preferred Stock, as the case may be, at the close of business on the day of surrender of the Warrant, or (ii) issue non-voting and non-dividend bearing scrip certificates (similar to those provided in paragraph (a) above) for such fraction of Common Stock or 6½% Second Cumulative Preferred Stock. Upon the effectiveness of the merger and consolidation all Warrants held by the Corporation shall be terminated.

Article 6. Stockholder Votes. (a) Of the shares of Common Stock and the shares of 7% Cumulative Preferred Stock of the Corporation outstanding and entitled to vote on the merger and consolidation, shares of Common Stock and shares of 7% Cumulative Preferred Stock were voted for and shares of Common Stock and shares of 7% Cumulative Preferred Stock were voted against the merger and consolidation.

(b) Of the shares of capital stock of ATC outstanding and entitled to vote on the merger and consolidation, shares were voted for and shares were voted against the merger and consolidation.

Article 7. Abandonment of Merger. (a) The merger and consolidation herein provided for may be terminated and abandoned by the Board of Directors of the Corporation at any time before or within five days after both meetings of stockholders have been held if, in the opinion

[fol. 79]

of such Board, the merger is inadvisable or impracticable by reason of the fact that, in the opinion of such Board, written objections to the merger have been filed (in accordance with the provisions of Section 180.69 of Wisconsin Statutes 1955 or Section 91 of the Stock Corporation Law of New York, as the case may be) with respect to a substantial number of shares of capital stock of ATC and the Corporation or of any one of them, and such merger and consolidation may also be terminated and abandoned by the Board of Directors of ATC at any time within five days after both meetings of stockholders have been held if due approval of the stockholders of the Corporation is not obtained to a revision of the Corporation's Stock Option Plan increasing the maximum aggregate number of shares of the Corporation's Common Stock with respect to which options can be issued under such Plan to 250,000 and increasing the number of shares of Common Stock with respect to which options can be issued to any one employee of the Corporation to 25,000.

(b) The merger and consolidation herein provided for may be terminated and abandoned at any time before its effective date:

(i) by mutual consent of the Boards of Directors of the Corporation and ATC, or

(ii) by the Board of Directors of ATC unless, prior to the effective date of the merger, the Commissioner of Internal Revenue makes a ruling satisfactory to such Board of Directors that the merger will constitute a tax-free reorganization and that a sale of shares of 6½% Second Cumulative Preferred Stock of Case will be considered to fall within an exception provided in Section 306(b)(4) or Section 306(c)(2) of the Revenue Code of 1954;

(c) The Corporation and ATC may mutually agree at any time to waive their respective rights to abandon the merger under this Article 7.

Article 8. Miscellaneous. (a) The Corporation may be sued in New York State for any obligation of ATC, a New York corporation, and it irrevocably appoints the Secretary of State of the State of New York as its agent to accept service of process in any action for the enforcement of payment of obligations.

(b) For all purposes of the laws of the State of Wisconsin, the merger and consolidation herein provided for shall become effective on the due recording of these articles in the office of the Register of Deeds of Racine County in the State of Wisconsin.

For all purposes of the laws of the State of New York the merger and consolidation herein provided for shall become effective when this certificate and the accompanying affidavit shall have been duly filed in the office of the Department of State of the State of New York.

[fol. 80]

IN WITNESS WHEREOF we have subscribed and acknowledged these Articles and this Certificate and the same have been signed in the name and on behalf of each corporation party hereto the day of 1956.

President of J. I. Case Company

[SEAL]

of capital stock of ATC and the Corporation or of any one of them, and such merger and consolidation may also be terminated and abandoned by the Board of Directors of ATC at any time within five days after both meetings of stockholders have been held if due approval of the stockholders of the Corporation is not obtained to a revision of the Corporation's Stock Option Plan increasing the maximum aggregate number of shares of the Corporation's Common Stock with respect to which options can be issued under such Plan to 250,000 and increasing the number of shares of Common Stock with respect to which options can be issued to any one employee of the Corporation to 25,000.

(b) The merger and consolidation herein provided for may be terminated and abandoned at any time before its effective date:

(i) by mutual consent of the Boards of Directors of the Corporation and ATC, or

(ii) by the Board of Directors of ATC unless, prior to the effective date of the merger, the Commissioner of Internal Revenue makes a ruling satisfactory to such Board of Directors that the merger will constitute a tax-free reorganization and that a sale of shares of 6½% Second Cumulative Preferred Stock of Case will be considered to fall within an exception provided in Section 306(b)(4) or Section 306(c)(2) of the Revenue Code of 1954;

(c) The Corporation and ATC may mutually agree at any time to waive their respective rights to abandon the merger under this Article 7.

Article 8. Miscellaneous. (a) The Corporation may be sued in New York State for any obligation of ATC, a New York corporation, and it irrevocably appoints the Secretary of State of the State of New York as its agent to accept service of process in any action for the enforcement of payment of obligations.

(b) For all purposes of the laws of the State of Wisconsin, the merger and consolidation herein provided for shall become effective on the due recording of these articles in the office of the Register of Deeds of Racine County in the State of Wisconsin.

[fol. 80]

For all purposes of the laws of the State of New York the merger and consolidation herein provided for shall become effective when this certificate and the accompanying affidavit shall have been duly filed in the office of the Department of State of the State of New York.

IN WITNESS WHEREOF we have subscribed and acknowledged these Articles and this Certificate and the same have been signed in the name and on behalf of each corporation party hereto the day of 1956.

President of J. I. Case Company

[SEAL]

Secretary of J. I. Case Company

President of American Tractor Corporation

[SEAL]

Secretary of American Tractor Corporation

[fol. 81]

Exhibit B to Complaint

Proxy: J. I. Case Company Special Meeting of Stockholders

The undersigned hereby appoints A. O. Choate, William Ewing, L. R. Clausen, H. S. Sturgis, C. M. Robertson, Frederick Nymeyer, John T. Brown, H. G. Barr, Wm. J. Grede, E. P. Hamilton, Wm. B. Peters and Allan B. Kline, and each of them, attorneys and proxies, each with power of substitution and revocation, for and in the name of the undersigned, to vote all shares of the capital stock of the undersigned in J. I. Case Company (hereinafter called the "Corporation") at a Special Meeting of the Stockholders of the Corporation, to be held at the principal executive office of the Company, Racine, Wisconsin, on November 15, 1956 at 12:00 noon, C. S. T., and at any and all adjournments thereof:

(1) For ☐ Against ☐ the adoption of the Plan of Merger of American Tractor Corporation into this Corporation.

(2) For ☐ Against ☐ the revision of the Stock Option Plan of the Corporation to increase the aggregate number of shares of Common Stock available under the plan from 100,000 to 250,000 shares and to increase the maximum number of shares available thereunder to any one person from 10,000 to 25,000.

(3) In the discretion of such attorneys and proxies, with respect to any other matters which may properly come before the meeting.

If no instruction is indicated, this proxy will be voted for the adoption of the proposals set forth above.

The undersigned hereby revokes all proxies heretofore given to vote at the aforesaid meeting.

.....

Stockholder to Sign Here

Dated , 1956

When signing as attorney, executor, administrator, trustee, guardian, or an officer of a corporation, give title as such. If shares are held jointly, each joint stockholder should sign.

This proxy is being solicited by the Management.

[fol. 82]

IN UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

Civil Action File No. 56-C-247

[Title omitted]

SUMMONS AND RETURN

To the above named Defendants:

You are hereby summoned and required to serve upon Bruno V. Bitker plaintiff's attorney, whose address is 208 East Wisconsin Ave. Milwaukee, Wis. an answer to the complaint which is herewith served upon you, within twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Dale E. Ihlenfeldt, Clerk of Court.
S. McCaigue, Deputy Clerk.

Date: November 13, 1956

[Seal of Court]

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

[fol. 82a]

Return on Service of Writ

I hereby certify and return, that on the 13th day of November 1956, I received this summons and served it together with the complaint herein as follows: on the within named J. I. Case Company by delivering to and leaving

with John T. Brown—President personally a true copy thereof this 14th day of November, A. D. 1956 at Racine, Wisconsin. I further certify and return that I served the within Summons together with Complaint on the within named John T. Brown by delivering to and leaving with him personally a true copy thereof this 14th day of November, A. D. 1956 at Racine, Wisconsin. I further certify and return that I served the within Summons together with Complaint on the within named H. G. Barr by delivering to and leaving with him personally a true copy thereof this 14th day of November, A. D. 1956 at Racine, Wisconsin. I further certify and return that I served the within Summons together with Complaint on the within named L. R. Clausen by delivering to and leaving a true copy thereof this 14th day of November, A. D. 1956 at Racine, Wisconsin. I further certify and return that I served the within Summons together with Complaint on the within named William J. Grede by delivering to and leaving with him personally a true copy thereof this 14th day of November, A. D. 1956 at Milwaukee, Wisconsin. I further certify and return that I served the within Sumomns together with Complaint on the within named William B. Peters by delivering to and leaving with him personally a true copy thereof this 14th day of November, A. D. 1956 at Racine, Wisconsin.

Lyle F. Milligan, United States Marshal.

Marshal's Fees

Travel	$ 5.60
Service	12.00
	$17.60

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

[fol. 83] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

No. 56-C-247

[Title omitted]

ORDER TO SHOW CAUSE AND RETURN—November 13, 1956

Upon the verified complaint of the plaintiff, and upon application of Bruno V. Bitker, one of the attorneys for the plaintiff,

It Is Ordered: That defendant, J. I. Case Co., show cause before the above entitled Court, in the Court Room, in the Federal Building, City of Milwaukee, Wisconsin, on the 14th day of November, 1956, at 4:00 o'clock P. M. of said day, or as soon thereafter as counsel may be heard, as to why the Court should not grant a temporary restraining order or temporary injunction, restraining the defendant, its officers, agents and employees, and all persons acting under its authority or control, and each of them, pending the final hearing of this cause, from taking any steps to advance the plan of merger described in the complaint.

It Is Further Ordered: That a copy of this order to show cause and of the verified complaint above referred to, be served upon the defendant, J. I. Case Company, at least four (4) hours prior to the time set for hearing herein.

Dated, Milwaukee, Wisconsin, this 13th day of November, 1956, at the hour of 4:00 o'clock P. M.

Robert E. Tehan, U. S. District Judge.

[fol. 83a]

Eastern District of Wisconsin, ss.:

I hereby certify and return that I served a copy of the within Order to Show Cause on the within named J. I. Case Company by delivering to and leaving with John T. Brown —President personally a true copy thereof this 14th day of

November, A. D. 1956 at Racine, Wisconsin. I further certify and return that I served a copy of the within Order to Show Cause on the within named John T. Brown—by delivering to and leaving with him—personally a true copy thereof this 14th day of November, A. D. 1956 at Racine, Wisconsin. I further certify and return that I served the within Order to Show Cause—on the within named H. G. Barr by delivering to and leaving with him personally a true copy thereof this 14th day of November, A. D. 1956 at Racine, Wisconsin. I further certify and return that I served the within Order to Show Cause on the within named L. R. Clausen by delivering to and leaving with him a true copy thereof this 14th day of November, A. D. 1956 at Racine, Wisconsin. I further certify and return that I served the within Order to Show Cause on the within named William B. Peters by delivering to and leaving with him personally a true copy thereof this 14th day of November, A. D. 1956 at Racine, Wisconsin.

Lyle F. Milligan, U, S. Marshal.

[fol. 86] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

Civil Action File No. 56-C-247

[Title omitted]

AFFIDAVIT OF H. D. MURPHY—Filed November 14, 1956

State of Wisconsin,
Milwaukee County, ss.:

H. D. Murphy, being first duly sworn on oath, deposes and says:

That he is a partner of Price Waterhouse & Co., Certified Public Accountants; that the public accounting work in connection with the merger of J. I. Case Company and American Tractor Corporation was done under his supervision.

That on page 40 of Exhibit A to the Complaint, Note 1, Paragraph (b) of "Notes to Transactions Given Effect to in Pro Forma Balance Sheet" states:

"The Board of Directors of Case has determined that the minimum fair value of the net assets of ATC to be acquired in the merger is $14,757,068."

This amount was considered by the Board of Directors of Case to be the net assets after deducting the redemption value of the preferred stock outstanding—namely, $1,312,500—as of the date of the pro forma balance sheet. Subsequent [fol. 87] redemption of this preferred stock is, therefore, automatically provided for without changing the values of assets to be acquired;

That this affidavit is made in opposition to the Order to Show Cause for a temporary restraining order or temporary injunction, and is made in explanation of certain allegations of the complaint in this proceeding asserted on information and belief.

H. D. Murphy.

Subscribed and sworn to before me this 14th day of November, A. D. 1956.

Alice Fleissner, Notary Public, Milwaukee County, Wisconsin. My commission expires: March 22nd, A. D. 1959.

[fol. 88] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

Civil Action File No. 56-C-247

[Title omitted]

AFFIDAVIT OF CLARK M. ROBERTSON—
Filed November 14, 1956

State of Wisconsin,
Milwaukee County, ss.:

Clark M. Robertson, being first duly sworn on oath, deposes and says:

That he is General Counsel, and one of the attorneys for J. I. Case Company, the defendant in the above entitled proceeding, and makes this affidavit in opposition to the Order to Show Cause served on said defendant, J. I. Case Company, this morning, November 14, 1956, at approximately the hour of 8:30 a.m. o'clock, and for the purpose of informing the Court with respect to certain aspects of the proceeding;

That yesterday afternoon, November 13, 1956, this affiant received a telephone call from one of the plaintiff's attorneys, Mr. Bruno V. Bitker, who courteously informed affiant that he had been retained to institute an action to prevent the merger of the defendant and American Tractor Corporation; that he did not have the papers at that time, but he expected them in during the course of the afternoon;

[fol. 89] The next word affiant had of this proceeding was a telephone call from Racine at about 8:30 o'clock this morning from Mr. John T. Brown, the President of the defendant, informing him that he had just been served with a Complaint and Order to Show Cause;

At about 9:50 o'clock this morning, affiant received a telephone call from Mr. William J. Grede advising him that he had just been served with a copy of the Complaint. Mr.

Grede sent the Complaint to affiant by messenger at about 10:15 o'clock, and shortly thereafter the papers served on the defendant, J. I. Case Company, arrived from Racine;

That the matters involved in said Complaint were within the knowledge of the plaintiff and his attorney, Mr. Arnold I. Shure, for a substantial period of time prior to November 14, 1956;

That under date of September 12, 1956, Mr. Arnold I. Shure wrote to Mr. John T. Brown, President of J. I. Case Company, requesting information with respect to the proposed merger, to which letter Mr. Brown replied;

Subsequent thereto, Mr. Shure communicated by telephone with this affiant raising certain questions with respect to the Plan of Merger and requesting additional information with respect to American Tractor Corporation; that pursuant thereto on September 17, 1956, Mr. John T. Brown mailed the 1955 Annual Report of American Tractor Corporation to Mr. Shure, together with a nine months' statement of that company ending May 31, 1956, and a pamphlet which included descriptions of some of the equipment manufactured and sold by American Tractor Corporation;

On September 18, 1956, Mr. Shure wrote Mr. Brown acknowledging receipt of the papers referred to above, making further objection to the merger, and stating that if additional information was not forthcoming he and his [fol. 90] client, Mr. Borak, would have no alternative but to actively oppose the Plan;

Thereafter, on Monday, October 8, 1956, the plaintiff, Carl H. Borak, and Mr. Shure, his attorney, conferred at Racine with Mr. John T. Brown, and the defendant, Mr. William J. Grede. During the course of that meeting formal written demand was made by the plaintiff for a list of shareholders of J. I. Case Company for the purpose of communicating with shareholders in opposition to the proposed merger; thereafter affiant and Mr. Shure conversed over the telephone a number of times with respect to the mechanics of furnishing the list of shareholders;

Affiant also made arrangements for Mr. Borak and Mr. Shure to visit the plant of American Tractor Corporation at Churbusco, Indiana on October 10th, 1956, and after this meeting affiant was sent a copy of a letter addressed to the plaintiff and signed by the President of American Tractor Corporation referring to the fact that plaintiff and Mr. Shure were satisfied with their visit at the plant, and that this affiant need not proceed further with respect to furnishing the shareholders' list previously requested;

That the proxy material attached to the Complaint was duly filed with the Securities and Exchange Commission in the manner required by law; that said proxy material was mailed to the stockholders of record October 16, 1956 on or about October 18, 1956; that Mr. Shure requested of Mr. John T. Brown that he be furnished with a copy of the proxy material by special mailing to his home, and Mr. Brown mailed the proxy material to Mr. Shure from Racine addressed to Mr. Shure's home on October 19, 1956;

That on or about October 23, 1956 Mr. Shure expressed to this affiant his displeasure with the merger, giving as his reason therefor that he had not been informed that the [fol. 91] defendant, J. I. Case Company, was acquiring the Preferred Stock and Purchase Warrants of American Tractor Corporation referred to in the Complaint; at this time Mr. Shure renewed his demand for a list of the shareholders of J. I. Case Company, and by special arrangement with J. P. Morgan & Co., the Transfer Agent of J. I. Case Company, a certified list of the shareholders as of October 16, 1956 was prepared and delivered to Mr. Shure at his office on October 31, 1956;

That subsequent thereto, on or about the 5th or 6th of November, 1956, by telephone conversation Mr. Shure requested affiant to advise him the value which the Board of Directors of J. I. Case Company proposed to assign to the Common Stock of J. I. Case Company, in accordance with Section 180.69 of the Wisconsin Statutes;

That on November 10, 1956 defendant received by registered mail, special delivery, a written objection signed by the plaintiff by which plaintiff seeks to invoke the appraisal provision of Section 180.69 of the Wisconsin Statutes;

That this affidavit is additionally made for the purpose of showing that the plaintiff had adequate time to institute this proceeding and have a determination thereof well in advance of the stockholders' meeting of November 15, 1956, and no emergency exists with respect to the restraining order.

Clark M. Robertson

Subscribed and sworn to before me this 14th day of November, A.D. 1956

Alice Fleissner, Notary Public, Milwaukee County, Wisconsin. My commission expires: March 22nd, A.D. 1959.

[fol. 92] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

[Title omitted]

ANSWER TO COMPLAINT—Filed November 26, 1956

The defendants, J. I. Case Company; John T. Brown; H. G. Barr; L. R. Clausen; William J. Grede, and William B. Peters, by their attorneys, Robertson and Hoebreckx and H. Maxwell Manzer, of Counsel, answering the complaint of the plaintiff:

I

Defendants state they are without knowledge or information sufficient to form a belief as to the truth of paragraph 2 of the complaint that plaintiff brings the action in a representative capacity, and therefore deny the same.

II

Deny the allegations contained in paragraph 9 of the complaint that the Plan of Merger was approved by the

Board of Directors of Case on or about October 2, 1956, and state that such Plan of Merger was, in fact, approved on September 24, 1956.

[fol. 93]

III

Deny that the capitalization of American Tractor Corporation as of July 31, 1956 is as alleged in paragraph 11 of the complaint.

IV

Deny the allegations contained in paragraph 13 of the complaint that defendant officers caused Case to purchase Fifty Thousand (50,000) shares of American Tractor Corporation Convertible Preferred Stock, Series 56-2, and stock purchase warrants as alleged before formal approval of the Plan of Merger by the Board of Directors.

V

Deny that any material in the Proxy Statement referred to in paragraph 15 of the complaint is untrue or misleading.

VI

Deny the allegations contained in paragraph 16 of the complaint that a direct and immediate consequence of the proposed merger will be to dilute the present book value of Case Common Stock to the injury of the present shareholders thereof, and specifically deny that there will be a loss of approximately Ten Dollars ($10.00) per share.

VII

Deny the allegations contained in paragraph 17 of the complaint that the proposed merger is against the best interests of the common stockholders of Case; deny that the same is prejudicial to such stockholders' rights; and deny that the Plan of Merger has been formulated or developed in nonconformity with the obligations imposed on the officers and directors of Case by law.

VIII

Deny the allegations contained in paragraph 17(a) of the complaint that the primary effect of the merger is to give voting control of Case to outsiders not previously associated with management and not shareholders of the Company, and deny that fees and salaries received by defendant [fol. 94] officers are in excess of Three Hundred Thousand Dollars ($300,000) per year.

IX

Deny the allegations contained in paragraph 17(b) of the complaint that Case sales and earnings from the sale of farm implements have declined considerably more than its competitors.

X

Deny the allegations contained in paragraph 17(c) of the complaint that a substantial part of 1956 sales are "paper sales" to dealers who will not have to pay for the equipment placed with them unless actually sold.

XI

Deny the allegations contained in paragraph 17(d) of the complaint that defendant Case Company arranged the merger transaction with American Tractor Corporation for the purpose of attempting to ward off stockholders and the possibilities of a proxy fight, and state that said allegations are inconsistent with the allegations of paragraph 17(a) of the complaint.

XII

Deny the allegations contained in paragraph 17(e) of the complaint that the Board of Directors of Case violated the provisions of Section 180.14, Wisconsin Statutes, and deny that the consideration fixed for stock to be issued by Case for the assets of American Tractor Corporation was less than the par value of such securities, and further deny that the consideration to be received will be less than par value of such securities.

XIII

Deny the allegations contained in paragraph 17(f) of the complaint that the Board of Directors violated Sections 180.14 and 180.16 of the Wisconsin Statutes in any respect.

[fol. 95]

XIV

Deny the allegations contained in paragraph 17(g) of the complaint that the value placed upon the assets of American Tractor Corporation is grossly excessive and bears no relationship to the true value. Deny that the Proxy Statement misrepresents in any manner or form the products of American Tractor Corporation.

XV

Deny the allegations contained in paragraph 19 of the complaint that the Stock Option Plan referred to therein evidences any failure whatsoever of defendant officers to properly protect the interests of the common stockholders, or is defective in any manner.

XVI

Deny the allegations contained in paragraph 20 of the complaint that defendant officers and directors of J. I. Case Company violated Section 180.15 of the Wisconsin Statutes in any respect.

XVII

Deny the allegations contained in paragraph 21 of the complaint that the Proxy Statement referred to therein failed to properly and fully inform shareholders of important facts relating to the wisdom or soundness of the proposed merger; deny that such Proxy Statement contained any incorrect or misleading statements and accordingly deny that any proxies received by management pursuant to its solicitation are illegal and void.

XVIII

Deny the allegations contained in paragraph 22 of the complaint that certain holders of Case Common Stock, in-

cluding the defendant officers, and persons affiliated with them, will gain in connection with such merger in any manner disproportionate to any other holder of Case Common Stock; deny that plaintiff and other holders of Case Common Stock will be severely and irreparably damaged as [fol. 96] a result of the consummation of such Plan of Merger, and on the contrary assert that the common stockholders will gain thereby as set forth in the Proxy Statement.

XIX

Deny the allegations contained in paragraph 23 of the complaint that plaintiff has no adequate remedy at law.

Wherefore, defendants pray for judgment dismissing the plaintiff's complaint and awarding defendants their costs and disbursements in such action.

Robertson and Hoebreckx, By Clark M. Robertson, By Walter S. Lewis, Jr., Attorneys for the Defendants, 640 Wells Building, 324 East Wisconsin Avenue, Milwaukee 2, Wisconsin.

Of Counsel: H. Maxwell Manzer, 119 Monona Avenue, Madison 3, Wisconsin.

[fol. 97] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

[Title omitted]

ORDER TO SHOW CAUSE—November 26, 1956

Upon the attached affidavit of John T. Brown, one of the defendants and the President of the defendant, J. I. Case Company, and upon the application of Robertson and Hoebreckx, attorneys for the defendants;

It Is Ordered, that the plaintiff, Carl H. Borak, show cause before the above entitled Court in the Federal Build-

ing, City of Milwaukee, Wisconsin, on the 10th day of December, 1956, at 10:30 o'clock in the forenoon of said day, or as soon thereafter as counsel may be heard, why this Court should not enter an order waiving pre-trial procedure and advancing this cause on the calendar for immediate trial.

It Is Further Ordered, that a copy of this Order to Show Cause and the accompanying affidavit be served upon the plaintiff's attorneys at least 48 hours prior to the time set for hearing herein.

Dated at Milwaukee, Wisconsin, this 26th day of November, 1956, at the hour of 5 o'clock in the afternoon.

Robert E. Tehan, U. S. District Judge.

[fol. 98] [Title omitted]

AFFIDAVIT OF JOHN T. BROWN IN SUPPORT OF MOTION

State of Wisconsin,
County of Racine, ss.:

John T. Brown, being first duly sworn, on oath deposes and says as follows:

(1) That he is one of the defendants in the above entitled action and the president and chairman of the Board of Directors of the defendant corporation, J. I. Case Company.

(2) That the business aim and purpose of the proposed merger of American Tractor into the defendant corporation is to diversify the products of J. I. Case Company and provide it with an extensive line of light and medium sized crawler tractors and earth moving equipment to complement its already existing full line of agricultural tractors and implements, all as set forth in detail in his letter to stockholders, set forth in Exhibit A to the Complaint.

[fol. 99] (3) That said merger contemplates the complete integration of production facilities and the utilization of presently idle facilities of J. I. Case Company, as well as

the integration of two presently existing sales distribution systems.

(4) That in order to utilize presently idle manufacturing facilities for the production of the new, diversified line of products, certain modification and rehabilitation work must be accomplished by the defendant corporation.

(5) That in order to integrate the sales distribution systems in time for the 1957 selling season, the defendant corporation must enter into new contracts with dealers in the United States and Canada to handle the new diversified line.

(6) That even with the new diversified line of products, the defendant corporation's sales will be subject to the seasonal peaks and valleys inherent in both the road machinery and farm machinery industries, i.e. production in the winter and early spring months for sale in spring, summer, and fall months, with the spring months generally being peak sales months.

(7) That in order to realize the benefits of the proposed merger of American Tractor Corporation into the defendant, J. I. Case Company, during the selling months of 1957, the integration of manufacturing facilities and distribution systems must be commenced immediately and effectuated as rapidly as possible; that a delay in effectuation of one week at this time may be magnified into a minimum of one month's loss during the selling months.

[fol. 100] (8) That the pendency of this action is causing and threatening to cause substantial and irreparable damage to the defendant corporation, to the ultimate detriment of the employees and shareholders thereof; that sales lost during the spring months of 1957 will be irretrievably lost, as well as future replacement sales; that such losses will be caused by the defendant corporation's inability, by virtue of this action to:

(a) Exhibit the diversified products of the defendant corporation under its own name at the Road Show in January 1957, which show is one of the most important exhibitions in the industry and is held only once every seven years.

(b) Make mill commitments for steel to handle its increased production, thereby ultimately causing it to depend on warehouse suppliers at increased costs.

(c) Release orders in new tools and machinery, thereby ultimately causing it to lose its priority for delivery.

(d) Commence rehabilitation of idle facilities on schedule, thereby ultimately requiring it to attempt to make up for lost time at increased costs for overtime and for subletting work which it otherwise would have performed itself.

(e) Immediately launch a unified, pre-sales season advertising and demonstration program.

(f) Immediately assure its dealers that they will have a diversified line of products to offer their customers during the 1957 sales season.

[fol. 101] (9) That the sales potential for 1957 of the merged corporation, which is in jeopardy, can be estimated conservatively at $10,000,000, and the loss of profits at $1,000,000; that even if these sales can be realized, a delay in amalgamation and commencement of the unified programs hereinbefore outlined could increase the costs of production by an estimated $500,000.

(10) That he makes this affidavit in support of the defendants' application for an order to show cause why pretrial procedures should not be waived and this action be advanced on the calendar for immediate trial.

John T. Brown

Subscribed and sworn to before me this 26 day of November, 1956.

Vonnie Jones, Notary Public, Racine County, Wisconsin. My commission expires April 10, 1960.

[fol. 109] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

Civil Action File No. 56-C-247

CARL H. BORAK, Plaintiff,

v.

J. I. CASE COMPANY, a Wisconsin corporation; JOHN T. BROWN; H. G. BARR; L. R. CLAUSEN; WILLIAM J. GREDE; and WILLIAM B. PETERS, Defendants.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DENYING MOTION FOR TEMPORARY INJUNCTION—November 29, 1956

The defendant, J. I. Case Company, appeared before this Court at four o'clock in the afternoon of the 14th day of November 1956, to show cause why a temporary injunction should not be granted restraining said Company, its officers and agents, from taking any steps to advance the Plan of Merger between it and the American Tractor Corporation:

Mr. Alex Elson of Chicago, Illinois and Mr. Bruno V. Bitker of Milwaukee, Wisconsin, Attorneys, appeared on behalf of the plaintiff, the applicant for such temporary injunction;

and

Robertson and Hoebreckx, by Messrs. Clark M. Robertson and Walter S. Davis, Jr., of Milwaukee, Wisconsin, and Mr. H. Maxwell Manzer. of Madison, Wisconsin, Attorneys, appeared on behalf of defendant, J. I. Case Company.

Upon stipulation of counsel the Court heard such matter sitting in banc and, after hearing and considering the cause, [fol. 110] on November 15th, 1956 made and filed its Memorandum Decision herein, which is made a part of the Court's Findings of Fact and Conculsions of Law. Consistent

therewith, and upon the record, admissions of counsel, and evidence adduced, the Court being fully advised in the matter, for the purpose of this application makes the following:

Findings of Fact

1.

Defendant, J. I. Case Company, a Wisconsin corporation, is a full line producer of farm machinery, including tractors and all of the equipment generally used in plowing, tilling, fertilizing, planting and seeding, cultivating, making hay and silage and harvesting grains, seeds, corn and many other crops. In addition, it produces and sells for non-farm use wheel tractors and power engine units. Its capitalization includes 92,906 issued and outstanding shares of Preferred Stock and 2,262,766 issued and outstanding shares of Common Stock.

2.

American Tractor Corporation, a New York corporation, manufactures crawler tractors, bulldozers, angledozers, and other industrial and specialized equipment.

3.

On or about September 6, 1956, the Board of Directors of Case and American Tractor Corporation approved plans for the merger of the two companies, and on October 15, 1956, after prior submission to the Securities and Exchange Commission, the Case Company mailed to its shareholders a printed brochure describing the proposed merger, and including therein: a letter from the President and Chairman of the Board and Notice of Special Meeting of Stockholders [fol. 111] to be held November 15, 1956, to consider and take action upon the Plan of Merger; a Proxy Statement describing the Plan; the Plan of Merger; and Articles of Merger and Certificate of Consolidation.

4.

The plaintiff, Carl H. Borak, is the owner of Two Thousand (2,000) shares of J. I. Case Company Common Stock.

Since the middle of September 1956, the plaintiff and his attorney have been in frequent communication with defendant, its officers and attorneys, relative to the proposed merger, and said defendant, Case Company, has cooperated fully with said plaintiff in respect to keeping him advised as to developments incident to such merger, including furnishing plaintiff's attorney with a special mailing of the Proxy material and a certified list of Case stockholders, and the matters involved herein were within the knowledge of plaintiff and his attorney for a substantial period of time prior to November 14, 1956.

5.

Process was first served on defendant herein at Racine, Wisconsin on the morning of November 14, 1956, some six hours before defendant was required to appear before this Court in Milwaukee, Wisconsin, and only one day prior to the time set for the stockholders' meeting to consider such merger.

6.

A substantial portion of the complaint herein is on information and belief, and the evidence does not establish that the proposed merger of defendant, Case Company, and American Tractor Corporation (a) is illegal; (b) is fraudulent; (c) will irreparably damage the plaintiff.

[fol. 112]

7.

The plaintiff and other shareholders of J. I. Case Company who do not approve of the merger with American Tractor Corporation are provided with a method for obtaining the fair value of their shares, which method is described in the Proxy Statement sent to them, and is in accordance with Section 180.69 of the Wisconsin Statutes.

And the Court makes the following:

Conclusions of Law

1.

The plaintiff, in not making this application more timely, has failed to do equity.

2.

The injury to plaintiff from a denial of this application for a temporary injunction will be relatively insignificant as compared with that which defendant, J. I. Case Company, would suffer from the granting of same.

3.

On the basis of the showing thus far made, the plaintiff has an adequate remedy at law against the defendant.

4.

The plaintiff is not entitled to a temporary injunction restraining the defendant, its officers and agents, from taking any steps to advance the Plan of Merger between it and American Tractor Corporation.

5.

The defendant is entitled to an order denying the application for a temporary injunction.

[fol. 113] Now, Therefore, It Is Ordered:

That plaintiff's application for a temporary injunction restraining the defendant, its officers and agents, from taking any steps to advance the Plan of Merger between it and American Tractor Corporation be, and the same hereby is, denied.

Dated this 29th day of November, 1956.

Robert E. Tehan, United States District Judge, Presiding.

[fol. 114] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

[Title omitted]

ANSWER TO ORDER TO SHOW CAUSE—Filed December 17, 1956

Now Comes Carl H. Borak, Plaintiff, by his attorneys, Bruno V. Bitker, Alex Elson and Arnold I. Shure, and in answer to the Order to Show Cause entered by the Court on November 26, 1956, why this Court should not enter an order waiving pre-trial procedures and advancing this cause on the calendar for immediate trial, states as follows:

1. The Order to Show Cause was entered on the basis of an affidavit of one of the defendants, John T. Brown. Paragraph 1 of the affidavit identifies Mr. Brown as the president and chairman of the Board of Directors of defendant J. I. Case Company. Paragraphs 2 to 7 of the affidavit state the avowed principal purpose of the proposed merger is diversification, the need to engage in modification and rehabilitation work in order to utilize present idle manufacturing facilities, the need to enter into new contracts with dealers in order to integrate the sales distribution system to handle the new diversified line, and the need to integrate immediately the manufacturing facilities and distribution systems of American Tractor Company and J. I. Case Company. Paragraph 8 sets forth various elements of claimed loss or damage to defendant J. I. Case [fol. 115] Company by reason of the pendency of the action.

2. The basic assumption of the affidavit is that the pendency of the action prevents the defendant J. I. Case Company from consummating the merger. The fact is that plaintiff's motion for a preliminary injunction was denied by the Court by order entered November 29, 1956. There is no order of this Court in this action which in any way prevents defendant J. I. Case Company from consummating the merger and taking the steps which the affidavit of

John T. Brown states are necessary. If the affidavit is to be taken literally it represents a restriction placed by the defendants upon themselves voluntarily and without compulsion of this Court,

3. The affidavit of John T. Brown, insofar as it asserts elements of possible damage which may follow from the pendency of this case is speculative and conjectural. But in any event if any damage should result from the delay in effecting the merger the damage is self-inflicted since there is no legal impediment to proceeding with the proposed merger.

4. The affidavit of defendant John T. Brown is in certain respects inconsistent and in conflict with the letter sent by defendant Brown, as Chairman of the Board and President of J. I. Case Company to stockholders, under date of November 30, 1956, a copy of which is hereto attached and made a part hereof, as Exhibit 1, in the following particulars:

(a) Contrary to the affidavit it would appear from the letter that the defendant J. I. Case Company does intend to proceed with the proposed merger. Thus the letter recites that the plan received stockholder approval, that the Board of Directors decided that numbers of stockholders filing [fol. 116] objections entitling them to appraisal was not so substantial as to render the merger inadvisable or impracticable, and therefore "the Board authorized the proper officers of the Company to take such action as is necessary or desirable to consummate the plan of merger."

(b) Contrary to the averments of Paragraph 8 of the affidavit that the pendency of the action prevents commencing "rehabilitation of idle facilities on schedule", the letter states, "Since the action taken by the directors and the stockholders, we have been proceeding to convert the Burlington, Iowa, plant for the manufacture of certain sizes of crawler tractors and their equipment."

(c) Contrary to the impression sought to be created by the affidavit that the integration of the two companies concerned was somehow being prevented by this action, the

letter states "plans are now being developed for integrating the distributory and selling organizations of the two companies in order that we may realize the benefits from this merger as rapidly as possible."

5. The affidavit of defendant John T. Brown is also inconsistent with the actions of defendant J. I. Case Company. Thus on Monday, December 10, 1956, Case held a press preview at Churubusco, Indiana at the site of American Tractor Corporation, of what is held out as its first full line of construction machinery. The press preview was attended by representatives of trade and farm journals and was reported by a Wall Street Journal staff reporter, in a story which was printed in the Wall Street Journal, Tuesday, December 11, 1956, a copy of which is hereto attached and is made a part hereof, as Exhibit 2. The holding of the press preview makes clear that the pendency of this action does not render the J. I. Case Company unable, as [fol. 117] stated in sub-paragraphs (e) and (f), paragraph 8 of the affidavit of John T. Brown to "immediately launch a unified, pre-sales season advertising and demonstration program", or "immediately assure its dealers that they will have a diversified line of products to offer their customers during the 1957 sales season."

6. Plaintiff desires the earliest trial date convenient to the Court. Delay in the trial of this action will prejudice plaintiff far more than defendant. The Court having denied the plaintiff's motion for preliminary injunction there is no Court order barring the defendants from proceeding to effectuate the proposed merger. Before plaintiff can proceed to trial in this case it is necessary that he engage in extensive pre-trial discovery. Since the action here is a class action plaintiff is under an obligation to take all steps necessary to fairly insure the adequate representation of all shareholders similarly situated to himself. The issues involved in this case are complicated, technical in character and require, for proper presentation, extensive research, investigation and study. It will be necessary to examine numerous books, records and documents. Herewith attached and made a part hereof as Exhibit 3 is a copy of a

letter request dated December 5, 1956, addressed on behalf of plaintiff to defendant's counsel listing some but not all of the books, records and documents which plaintiff must examine prior to proceeding with this case. It is obvious from Exhibit 3 that considerable time will be required for the examination, consideration and study of the documents therein referred to. In addition, it will be necessary for the plaintiff to take the depositions of all of the directors [fol. 118] and officers of J. I. Case Company, some of the key personnel of the company, the principal directors and officers of the American Tractor Corporation, and a substantial number of brokerage firms in New York City and Chicago.

Plaintiff will cooperate in expediting the pre-trial discovery hereinabove referred to.

For the foregoing reasons plaintiff submits that the Court should not enter an order waiving pre-trial procedure in this case and should not advance this cause on the calendar for immediate trial.

Carl H. Borak, Plaintiff, By Alex Elson, One of the Attorneys for Plaintiff.

Bruno V. Bitker, 208 East Wisconsin Avenue, Milwaukee 2, Wisconsin; Alex Elson, 11 South LaSalle Street, Chicago 3, Illinois; Arnold I. Shure, 11 South LaSalle Street, Chicago 3, Illinois; Attorneys for Plaintiff.

[fol. 269]

CERTIFICATE OF CONSOLIDATION

of

AMERICAN TRACTOR CORPORATION

and

J. I. CASE COMPANY

into

J. I. CASE COMPANY

(Pursuant to Section 91 of the Stock Corporation Law of New York)

ARTICLES OF MERGER

of

AMERICAN TRACTOR CORPORATION

into

J. I. CASE COMPANY

(Pursuant to Section 180.68 of Wisconsin Statutes 1955)

J. I. Case Company (hereinafter sometimes called "the Corporation"), a Wisconsin corporation, and American Tractor Corporation (hereinafter sometimes called "ATC"), a New York corporation, desiring to effect the merger of ATC into the Corporation pursuant to the provisions of Section 180.68 of the Wisconsin Statutes 1955 and the consolidation of ATC with the Corporation pursuant to the provisions of Section 91 of the Stock Corporation Law of New York, and the Boards of Directors of each such corporation having adopted a Plan of Merger as set forth and included in these Articles of Merger and Certificate of Consolidation, their respective Presidents or one of their respective Vice Presidents and their respective Secretaries or one of their respective Assistant Secretaries do hereby certify:

Article 1. Corporations Proposing to Merge and Consolidate. The corporations to be included in the merger and consolidation are J. I. Case Company, a Wisconsin corporation, and American Tractor Corporation, a New York corporation. J. I. Case Company, a Wisconsin corporation and one of the constituent corporations, will survive the merger and consolidation. The name of such surviving corporation will continue to be "J. I. Case Company" and its principal office will continue to be at 700 State Street, Racine, Wisconsin.

J. I. Case Company was incorporated under the laws of the State of Wisconsin on February 25, 1880 as J. I. Case Threshing Machine Company, and was authorized to do business in the State of New York by certificate of authority of the Secretary of State of New York dated February 18, 1907.

[fol. 270] The Certificate of Incorporation of American Tractor Corporation, which was incorporated under the Stock Corporation Law of New York as Washington Tractor & Farm Equipment Corp., was filed in the office of the Secretary of State of New York on July 19, 1948.

Article 2. Outstanding Shares of the Corporation and ATC. The Corporation had outstanding as of the date of the meeting of its stockholders to act on this merger and consolidation a total of 2,355,672 shares of capital stock, divided into 2,262,766 shares of Common Stock, par value $12.50 a share, and 92,906 shares of 7% Cumulative Preferred Stock, par value $100 a share. As of the date of filing these Articles of Merger and Certificate of Consolidation the Corporation had outstanding a total of 2,355,672 shares of capital stock, divided into 2,262,766 shares of Common Stock and 92,906 shares of 7% Cumulative Preferred Stock.

ATC had outstanding as of the date of the meeting of the stockholders to act on this merger and consolidation a total of 1,223,557 shares of capital stock, divided into 1,111,057 shares of Common Stock, par value 25¢ a share, and 112,500 shares of Convertible Preferred Stock, Series 55-1, 56-1 and 56-2. The 1,111,057 shares of Common Stock were entitled to vote on the merger and consolidation. Prior to the effec-

tive date of this merger and consolidation ATC will have redeemed all its outstanding shares of Convertible Preferred Stock, Series 55-1, 56-1 and 56-2. Accordingly, under the terms of the Certificate of Incorporation, as amended, of ATC such shares were not part of the capital stock of ATC entitled to vote on this merger and consolidation. As of the date of filing these Articles of Merger and Certificate of Consolidation ATC had outstanding a total of 1,111,057 shares of Common Stock.

Article 3. Changes in the Articles of Association of the Corporation. The following changes in the Articles of Association of the Corporation, the surviving corporation, are to be effected by this merger and consolidation:

(a) The provisions of Article 1 following the initial paragraph thereof are amended to read as follows:

"The business and purposes of such corporation are and shall be:

To manufacture, purchase, sell and repair all kinds of agricultural machinery, tools, implements, and farm equipment; all kinds of engines, motors, tractors, road machinery, wagons, motor vehicles, and other vehicles; all devices, attachments and equipment used or intended for use in connection therewith, and to produce, manufacture, buy, sell and deal in any and all materials used in connection with their manufacture, and to engage in any other lawful business for any purpose whatever for which corporations may be organized under Chapter 180, Wisconsin Business Corporation Law.

To apply for, obtain, register, lease or otherwise acquire, and to hold, use, own, operate, sell, license, assign or otherwise dispose of any trademarks, trade names, patents, inventions, improvements, processes and formulae used or usable in connection with the manufacture, production, sale or repair of any articles.

To engage in any and all lawful business whenever necessary, convenient or incidental to the exercise or attainment of any of the powers or purposes herein-

before specified, excepting such as is forbidden by law.

The corporation shall have power to conduct its business in any of the states, territories or colonial possessions of the United States and in foreign countries, and to have one or more offices outside of the state of Wisconsin; and to hold, purchase, mortgage and convey real and personal property both in and out of the state of Wisconsin."

[fol. 271] (b) Article 3 is amended to read as follows:

"The capital stock of this corporation shall consist of an aggregate of Five Million Four Hundred One Thousand Eight Hundred Twenty-Five (5,401,825) shares of capital stock, divided into One Hundred One Thousand Eight Hundred Twenty-Five (101,825) shares of Preferred Stock, par value One Hundred Dollars ($100) each, One Million Three Hundred Thousand (1,300,000) shares of 6½% Second Cumulative Preferred Stock, par value Seven Dollars ($7) each, and Four Million (4,000,000) shares of Common Stock, par value Twelve Dollars and Fifty Cents ($12.50) each.

The holders of the Preferred Stock shall be entitled to receive, when and as declared, from the surplus or net profits of the corporation, yearly dividends at the rate of seven per centum per annum, and no more, payable quarter-yearly on dates to be fixed by the By-laws. The dividends on the Preferred Stock shall be cumulative, and shall be payable before any dividends on the 6½% Second Cumulative Preferred Stock or on the Common Stock shall be paid or set apart, so that, if in any year dividends amounting to seven per centum shall not have been paid on the Preferred Stock, the deficiency shall be payable before any dividend shall be paid upon or set apart for the 6½% Second Cumulative Preferred Stock or for the Common Stock.

The holders of the 6½% Second Cumulative Preferred Stock shall be entitled to receive, when and as declared, from the surplus or net profits of the cor-

poration, yearly dividends at the rate of six and one-half per centum, per annum, and no more, payable quarter-yearly on dates to be fixed by the By-laws. The dividends on the 6½% Second Cumulative Preferred Stock shall be cumulative, and shall be payable before any dividends on the Common Stock shall be paid or set apart, so that, if in any year dividends amounting to six and one-half per centum shall not have been paid thereon, the deficiency shall be payable before any dividend shall be paid upon or set apart for the Common Stock. Cash dividends on the 6½% Second Cumulative Preferred Stock shall accrue from the date of issue, if that be a dividend date, and otherwise from a date five days after the approval of the merger of American Tractor Corporation into the corporation by the stockholders of both such companies. Whenever all cumulative dividends on the Preferred Stock for all previous years shall have been declared and shall have become payable, and the accrued quarter-yearly installments on such stock for the current year shall have been declared, and the corporation shall have paid such cumulative dividends for previous years and such accrued quarter-yearly installments, or shall have set aside from its surplus or net profits a sum sufficient for the payment thereof, the Board of Directors may declare dividends on the 6½% Second Cumulative Preferred Stock, payable then or thereafter, out of any remaining surplus or net profits.

Whenever all cumulative dividends on the Preferred Stock and the 6½% Second Cumulative Preferred Stock for all previous years shall have been declared and shall have become payable, and the accrued quarter-yearly installments for the current year shall have been declared, and the corporation shall have paid such cumulative dividends for previous years and such accrued quarter-yearly installments, or shall have set aside from its surplus or net profits a sum sufficient for the payment thereof, the Board of Directors may declare dividends on the

Common Stock, payable then or thereafter, out of any remaining surplus or net profits.

In the event of any liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation, the holders of the Preferred Stock shall be entitled to be paid in full both the par amount of their shares and the unpaid dividends [fol. 272] accrued thereon, before any amount shall be paid to the holders of the 6½% Second Cumulative Preferred Stock or of the Common Stock; and after the payment to the holders of the Preferred Stock of its par value, and the unpaid accrued dividends thereon, the holders of the 6½% Second Cumulative Preferred Stock shall be entitled in the event of voluntary liquidation or dissolution or winding up to the amount of Seven Dollars and Thirty-five Cents ($7.35) on their shares and in the event of involuntary liquidation or dissolution or winding up to the par amount of their shares, in each case with the amount of unpaid dividends accrued thereon, before any amount shall be paid to the holders of the Common Stock; and after such payments to the holders of Preferred Stock and 6½% Second Cumulative Pfeferred Stock the remaining assets and funds shall be divided and paid to the holders of the Common Stock according to their respective shares.

Except as provided below, the corporation may redeem at its option the whole or any part (pro rata or by lot) of the 6½% Second Cumulative Preferred Stock outstanding at any time by paying therefor in cash Seven Dollars and Thirty-five Cents ($7.35) per share plus accrued unpaid dividends thereon to the date fixed for such redemption (herein called the "redemption price"), by mailing notice of such redemption to the holders of record of such 6½% Second Cumulative Preferred Stock so to be redeemed at their respective addresses as the same may appear on the books of the corporation as of a date, not more than fifty days prior to the redemption date, as shall be established by the Board of Directors of the corporation. Such notice shall specify the time and

place of redemption and shall be mailed at least thirty days prior to the date specified therein for redemption. So long as any shares of Preferred Stock are outstanding the corporation will not redeem any shares of 6½% Second Cumulative Preferred Stock unless all dividends upon the Preferred Stock and the full dividends for the then current quarterly dividend period thereon shall have been paid or declared and a sum sufficient for the payment thereof set apart. Unless all dividends upon 6½% Second Cumulative Preferred Stock shall have been paid and the full dividends thereon for the then current quarterly dividend period shall have been paid or declared and a sum sufficient for the payment thereof set apart, the corporation shall not redeem less than all outstanding shares of 6½% Second Cumulative Preferred Stock.

If the aforesaid notice of redemption of shares of 6½% Second Cumulative Preferred Stock shall have been duly given, and if on or before the redemption date the funds necessary for such redemption shall have been set aside by the corporation, separate and apart from its other funds, in trust for the pro rata benefit of the holders of shares so called for redemption, then, notwithstanding that any certificate for shares of 6½% Second Cumulative Preferred Stock so called for redemption shall not have been surrendered for cancellation, the shares represented thereby shall not be deemed outstanding, dividends thereon shall cease to accrue from and after the redemption date, and all rights with respect to such 6½% Second Cumulative Preferred Stock so called for redemption shall forthwith after such redemption date cease and determine, except only the right to receive the redemption price therefor, but without interest; and if on or before the redemption date the corporation shall deposit in trust with any bank or trust company in the United States having a capital and undivided surplus of at least three million dollars ($3,000,000) to be applied to the redemption of

the shares of 6½% Second Cumulative Preferred Stock so called for redemption, funds sufficient for such redemption, and shall have given notice of redemption as aforesaid or shall have given the bank or trust company irrevocable authority to give such notice, then from and after the date of such deposit all rights of holders of the 6½% Second Cumulative Preferred Stock so called for redemption shall cease, [fol. 273] except the right to receive the redemption price therefor, but without interest. Any interest accrued on such funds shall be paid to the corporation. Any funds so set aside or deposited and unclaimed at the end of six years from such redemption date shall be released and repaid to the corporation, and such holders of such 6½% Second Cumulative Preferred Stock so called for redemption as shall not have received the redemption price prior to such release and repayment to the corporation shall look only to the corporation for payment thereof without interest.

No dividend upon the Common Stock in excess of six per centum per annum shall be declared or paid, if thereby the assets of the corporation applicable to the payment of dividends, as determined by the Board of Directors, shall be reduced to an amount less than Two Million Dollars ($2,000,000).

There are hereby reserved for issuance and sale under any stock option plan, as adopted and as amended by the stockholders by a majority of the votes cast at any properly constituted meeting of stockholders, 250,000 shares of Common Stock of the corporation, par value Twelve Dollars and Fifty Cents ($12.50) each (except that in the event of any change in the number of outstanding shares of Common Stock of the corporation by reason of split-ups or combinations of shares, or recapitalizations, or by reason of stock dividends, the number of shares so reserved may be adjusted so as to reflect such change); and no stockholder shall be entitled as a matter of right to subscribe for, purchase or receive any shares of Common Stock so reserved or have any

preemptive or preferential right to subscribe for or purchase the same."

(c) The first paragraph of Article 4 is amended to read as follows:

"The general officers of this corporation shall be a Chairman of the Board, a President, one or more Vice-Presidents, a Secretary and a Treasurer. The number of directors shall be fixed by the By-laws, but such number shall not be more than fifteen until the date of the annual meeting of the stockholders of the corporation scheduled to be held in the corporation's fiscal year ending October 31, 1957."

(d) The second paragraph of Article 7 is amended to read as follows:

"At every meeting of stockholders each holder of Preferred Stock shall be entitled to eight votes in person or by proxy, and each holder of Common Stock shall be entitled to one vote in person or by proxy, for each share of the capital stock standing in the name of such stockholder on the books of the corporation, except where a date shall have been fixed as a record date for the determination of stockholders entitled to vote as hereinafter provided. The By-laws may fix or authorize the Board of Directors to fix in advance a date not exceeding thirty (30) days preceding the date of any meeting of stockholders, or the date for the payment of any dividend, or the date for the allotment of rights, or the date when any change, conversion or exchange of capital stock shall go into effect, as a record date for the determination of the stockholders entitled to notice of and to vote at any such meeting, or entitled to receive payment of any such dividend, or entitled to any such allotment of rights, or to exercise the rights in respect of any such change, conversion or exchange of capital stock; and in such case only such stockholders as shall be stockholders of record at the close of business on the date so fixed shall be entitled to such notice of and to vote at such meeting, or to

receive such allotment of rights, or to exercise such rights, as the case may be, notwithstanding any transfer of any stock on the books of the corporation after any such record date fixed as aforesaid. In the event that six quarterly dividends on the 6½% Second Cumulative Preferred Stock, whether or not consecutive, shall be unpaid, in whole or in part, the holders of the outstanding 6½% Second Cumula- [fol. 274] lative Preferred Stock, voting separately as a class, shall be entitled at the next annual meeting to elect two directors. Such voting power shall so continue to vest in the 6½% Second Cumulative Preferred Stock until all arrears in payment of quarterly dividends thereon shall have been paid and the dividends thereon for the current quarter shall have been declared and funds for the payment thereof set apart, and upon the happening of such event the 6½% Second Cumulative Preferred Stock shall be divested of such voting power, but subject always to the same provisions for the vesting of such voting power in the 6½% Second Cumulative Preferred Stock in the case of any similar future default.

At any annual meeting at which the 6½% Second Cumulative Preferred Stock shall be entitled to elect directors, the holders of a majority in interest of the then outstanding 6½% Second Cumulative Preferred Stock, whether present in person or by proxy, shall constitute a quorum for that purpose, and a plurality of the votes of the 6½% Second Cumulative Preferred Stock at such a meeting at which such a quorum is present shall be sufficient to elect the directors whom the holders of 6½% Second Cumulative Preferred Stock are entitled to elect. The persons so elected as directors, together with the directors elected by the Preferred and Common Stock, shall constitute the Board of Directors of the corporation.

No amendment, alteration or repeal of the Articles of Association or of the By-laws of the corporation which materially adversely affects the preferences, privileges or voting powers of the Preferred

Stock or the 6½% Second Cumulative Preferred Stock shall be made without the favorable vote of at least two-thirds in interest of the outstanding shares of the class of stock so affected, voting as a class."

Article 4. Directors of the Surviving Corporation. Upon the merger becoming effective, the following persons shall become directors of the Corporation, to serve until the first annual meeting of stockholders of the Corporation to be held after the merger has become effective and until their successors shall be duly elected and qualified:

Messrs. A. O. Choate, William Ewing, L. R. Clausen, H. S. Sturgis, C. M. Robertson, Frederick Nymeyer, John T. Brown, H. G. Barr, Wm. J. Grede, E. P. Hamilton, Wm. B. Peters, Allan B. Kline, Marc B. Rojtman, Edward L. Elliott and Mentor Kraus.

Article 5. Terms and Conditions of the Merger and Consolidation, Conversion of Shares, etc. The terms and conditions of the merger and consolidation, the mode of carrying the same into effect, and the manner and basis of converting the shares of ATC into shares of the Corporation are as follows:

(a) Each of the issued and outstanding shares of Common Stock of ATC shall upon the effectiveness of this merger and consolidation, except as provided below, automatically and without any action on the part of the holder thereof be converted into and be deemed to be (i) one-half of one share of Common Stock of the Corporation and (ii) one share of 6½% Second Cumulative Preferred Stock, par value $7 a share, of the Corporation. Each holder of shares of Common Stock of ATC, upon surrender to the Corporation's duly authorized agent of one or more certificates for such shares for cancellation, shall thereafter be entitled to receive certificates representing the number of shares of Common Stock and 6½% Second Cumulative Preferred Stock of the Corporation to which such holder is entitled as above provided. No frac-

tional shares of Common Stock of the Corporation shall be issued pursuant to this paragraph (a). In lieu of such a fractional share the Corporation shall at its election deliver to any registered holder of a number of shares of Common Stock of ATC which is not evenly divisible by two (i) $7.00 in cash or (ii) non-voting [fol. 275] and non-dividend bearing scrip certificates (exchangeable within such period as may be fixed by the Board of Directors of the Corporation, upon surrender thereof with other scrip certificates aggregating one or more full shares, for stock certificates for the full number of shares of Common Stock of the Corporation represented) for such fraction, in such form and containing such terms and conditions as the Board of Directors may approve.

(b) Unless and until any outstanding certificates of Common Stock of ATC shall be surrendered for exchange, no dividend payable to holders of record of Common Stock or 6½% Second Cumulative Preferred Stock of the Corporation shall be paid to the holders of such outstanding certificates on account thereof, but upon surrender of such certificates of Common Stock of ATC there shall be paid to the record holder of the certificates for the Common Stock and 6½% Second Cumulative Preferred Stock of the Corporation, into which such shares shall have been changed, all dividends which have become payable thereon.

(c) Each of the outstanding Warrants to purchase Common Stock of ATC shall upon the effectiveness of the merger and consolidation, except as provided below, automatically and without any action on the part of the holder thereof be converted into and be deemed to be a Warrant entitling the holder to purchase (i) in lieu of each full share of Common Stock of ATC, the following for a price of $16: (A) one-half of one share of Common Stock of the Corporation, and (B) one share of 6½% Second Cumulative Preferred Stock of the Corporation; and (ii) in lieu of any fraction of a share of Common Stock of ATC, a corresponding fraction of

the above combination of Common Stock and 6½% Second Cumulative Preferred Stock at a corresponding fraction of the price of $16. Warrants may be combined to permit the purchase of full shares. No fractional shares of Common Stock or 6½% Second Cumulative Preferred Stock of the Corporation shall be issued on the exercise of such Warrants. In the event that any person exercising such Warrants would otherwise become entitled to a fractional share of such Common Stock or such 6½% Second Cumulative Preferred Stock, the Corporation may, at its election, in lieu thereof (i) pay an amount in cash equal to such fraction multiplied by the market value of such Common Stock or 6½% Second Cumulative Preferred Stock, as the case may be, at the close of business on the day of surrender of the Warrant, or (ii) issue non-voting and non-dividend bearing scrip certificates (similar to those provided in paragraph (a) above) for such fraction of Common Stock or 6½% Second Cumulative Preferred Stock. Upon the effectiveness of the merger and consolidation all Warrants held by the Corporation shall be terminated.

Article 6. Stockholder Votes. (a) Of the 2,262,766 shares of Common Stock and the 92,906 shares of 7% Cumulative Preferred Stock of the Corporation outstanding and entitled to vote on the merger and consolidation, 1,592,474 shares of Common Stock and 73,433 shares of 7% Cumulative Preferred Stock were voted for and 143,088 shares of Common Stock and 785 shares of 7% Cumulative Preferred Stock were voted against the merger and consolidation.

(b) Of the 1,111,057 shares of Common Stock of ATC outstanding and entitled to vote on the merger and consolidation, 927,599 shares were voted for and 3,810 shares were voted against the merger and consolidation.

Article 7. Abandonment of Merger. (a) The merger and consolidation herein provided for may be terminated and abandoned by the Board of Directors of the Corporation at any time before or within five days after both meetings of stockholders have been held if, in the opinion of such board,

[fol. 276] the merger is inadvisable or impracticable by reason of the fact that, in the opinion of such Board, written objections to the merger have been filed (in accordance with the provisions of Section 180.69 of Wisconsin Statutes 1955 or Section 91 of the Stock Corporation Law of New York, as the case may be) with respect to a substantial number of shares of capital stock of ATC and the Corporation or of any one of them, and such merger and consolidation may also be terminated and abandoned by the Board of Directors of ATC at any time within five days after both meetings of stockholders have been held if due approval of the stockholders of the Corporation is not obtained to a revision of the Corporation's Stock Option Plan increasing the maximum aggregate number of shares of the Corporation's Common Stock with respect to which options can be issued under such Plan to 250,000 and increasing the number of shares of Common Stock with respect to which options can be issued to any one employee of the Corporation to 25,000.

(b) The merger and consolidation herein provided for may be terminated and abandoned at any time before its effective date:

(i) by mutual consent of the Boards of Directors of the Corporation and ATC, or

(ii) by the Board of Directors of ATC unless, prior to the effective date of the merger, the Commissioner of Internal Revenue makes a ruling satisfactory to such Board of Directors that the merger will constitute a tax-free reorganization and that a sale of shares of 6½% Second Cumulative Preferred Stock of Case will be considered to fall within an exception provided in Section 306(b)(4) or Section 306(c)(2) of the Revenue Code of 1954;

(c) The Corporation and ATC may mutually agree at any time to waive their respective rights to abandon the merger under this Article 7.

Article 8. Miscellaneous. (a) The Corporation may be sued in New York State for any obligation of ATC, a New

York corporation, and it irrevocably appoints the Secretary of State of the State of New York as its agent to accept service of process in any action for the enforcement of payment of obligations.

(b) For all purposes of the laws of the State of Wisconsin, the merger and consolidation herein provided for shall become effective on the due recording of these articles in the office of the Register of Deeds of Racine County in the State of Wisconsin.

For all purposes of the laws of the State of New York the merger and consolidation herein provided for shall become effective when this certificate and the accompanying affidavit shall have been duly filed in the office of the Department of State of the State of New York.

In Witness Whereof we have subscribed and acknowledged these Articles and this Certificate and the same have been signed in the name and on behalf of each corporation party hereto the 9th day of January, 1957.

[SEAL]

John T. Brown, President and Chairman of the Board of J. I. Case Company.

L. T. Newman, Secretary of J. I. Case Company.

[SEAL]

Marc B. Rojtman, President of American Tractor Corporation.

Lillian D. Rojtman, Secretary of American Tractor Corporation.

[fol. 277]

State of Wisconsin,
County of Racine, ss.:

On the 9th day of January, 1957 before me personally came John T. Brown and L. T. Newman, to me known and known to me to be the persons described in and who executed the foregoing Certificate and Articles on behalf of J. I. Case Company, and they severally duly acknowledged that they executed the same.

Thoros Wardell, Notary Public, Racine County, Wisconsin. My Commission expires June 19, 1960.

State of Wisconsin,
County of Racine, ss.:

On the 9th day of January, 1957 before me personally came Marc B. Rojtman and Lillian D. Rojtman, to me known and known to me to be the persons described in and who executed the foregoing Certificate and Articles on behalf of American Tractor Corporation, and they severally duly acknowledged that they executed the same.

Thoros Wardell, Notary Public, Racine County, Wisconsin. My Commission expires June 19, 1960.

State of Wisconsin,
County of Racine, ss.:

Marc B. Rojtman and Lillian D. Rojtman, being duly sworn, depose and say, and each for himself or herself deposes and says: that he, Marc B. Rojtman, is the President, and that she, Lillian D. Rojtman, is the Secretary, of American Tractor Corporation, a New York corporation and one of the constituent corporations named in the foregoing Certificate of Consolidation and Articles of Merger; that they have been authorized to execute and file such Certificate and Articles by the votes, cast in person or by proxy, of the holders of record of two-thirds of the outstanding shares of such corporation entitled to vote on such consolidation; that such votes were cast at a stockholders' meeting held in New York, New York on January 8, 1957 upon notice as prescribed in Section 45 of the New York Stock Corporation Law to every stockholder of record of said corporation entitled to vote thereon.

MARC B. ROJTMAN

LILLIAN D. ROJTMAN

Subscribed and sworn to before me this 9th day of January, 1957.

Thoros Wardell, Notary Public, Racine County, Wisconsin. My Commission expires June 19, 1960.

[fol. 278]

State of Wisconsin,
County of Racine, ss.:

John T. Brown and L. T. Newman, being duly sworn, depose and say, and each for himself deposes and says: that he, John T. Brown, is the President and Chairman of the Board, and that he, L. T. Newman, is the Secretary, of J. I. Case Company, a Wisconsin corporation and one of the constituent corporations named in the foregoing Certificate of Consolidation and Articles of Merger; that they have been authorized to execute and file such Certificate and Articles by the votes, cast in person or by proxy, of the holders of record of two-thirds of the outstanding shares of Common Stock and two-thirds of the outstanding shares of Preferred Stock of such corporation entitled to vote on such consolidation; that such votes were cast at a stockholders' meeting held in Racine, Wisconsin on November 15, 1956 upon notice as prescribed in Sections 180.24 and 180.64 of the Wisconsin Business Corporation Law to every stockholder of record of said corporation entitled to vote thereon.

JOHN T. BROWN

L. T. NEWMAN

Subscribed and sworn to before me this 9th day of January, 1957.

Thoros Wardell, Notary Public, Racine County, Wisconsin. My Commission expires June 19, 1960.

STATE OF WISCONSIN
Department of State ss

FILED
JAN 10 1957
ROBERT C. ZIMMERMAN
Secretary of State

[fol. 335]

IN UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

No. 56C 247

CARL H. BORAK, for and on behalf of himself and all of the other common stockholders of J. I. CASE COMPANY who are similarly situated to him, Plaintiff,

—vs.—

J. I. CASE COMPANY, a Wisconsin corporation, MARC B. ROJTMAN and EDWARD L. ELLIOTT, individually and as representatives of all AMERICAN TRACTOR CORPORATION shareholders who received J. I. CASE COMPANY common and second preferred stock in the merger herein referred to, and their successors in interest, A. O. CHOATE, WILLIAM EWING, L. R. CLAUSEN, H. S. STURGIS, JOHN T. BROWN, H. G. BARR, WILLIAM J. GREDE, E. P. HAMILTON, WILLIAM B. PETERS, LILLIAN ROJTMAN, ELLEN B. ELLIOTT, MENTOR KRAUS, HERBERT H. BLOOM, ALLEN NORTHEY JONES, C. J. REESE, C. W. JOHNSON, EARL GINN, WESLEY TODD, H. W. VANDEVEN, JOHN W. MULFORD, JOAN M. DIXON, ELLIOTT & COMPANY, a partnership, JOHN B. ELLIOTT, MARY E. ELLIOTT, EDWARD A. WALSH, EDNA WALSH, RICHARD PISTELL, JANET PISTELL, GILLIGAN WILL & COMPANY, a partnership, JAMES GILLIGAN, WILLIAM WILL, LOUIS W. ALTER, VERONICA GILLIGAN, NATHANIEL C. BEEBER, individually and as representative of all holders of common stock purchase warrants issued by American Tractor Corporation to the purchasers of its preferred stock, Series 56-1, R. HOWE, L. E. HOWARD and E. KALIK, Defendants.

AMENDED AND SUPPLEMENTAL COMPLAINT—
Filed April 1, 1958

Carl H. Borak, plaintiff, by his attorneys, Bruno V. Bitker, Alex Elson and Arnold I. Shure, alleges upon in-

formation and belief, except as to paragraphs 1 and 2 which are alleged on personal knowledge, as follows:

I. *The Parties—Jurisdiction of the Court*:

1. Plaintiff Carl H. Borak, at all times herein mentioned, was and now is a resident and citizen of the State of Illinois. He is, and at the time of the matters complained of herein was, the registered and beneficial owner of 2000 shares of common stock of J. I. Case Company, formerly J. I. Case Threshing Machine Company (hereinafter referred to as "Case"). Five Hundred shares were purchased in 1952 which became 1000 shares in a subsequent 2 for 1 stock split and 1000 shares in 1955.

[fol. 336] 2. Plaintiff brings this action in a representative capacity on behalf of himself and all of the other common stockholders of Case who are similarly situated to him. Such stockholders constitute a class of more than 800 persons and are so numerous it is impracticable for all to join as plaintiffs. Plaintiff is well able to represent such common stockholders fairly and effectively.

3. Defendant Case, a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, is a resident of and doing business in that state and has its principal office in that state.

4. The other defendants and their states of residence are as follows:

a) *Directors and Former Director of Case, Periods in Office and Other Positions With Case:*

	Director From	To	Other Position Held with Case	Citizen of
L. R. Clausen	1924	-	Consultant, and former President	Wisc.
John T. Brown	1947	-	Chairman of Board of Directors and President	Wisc.
H. G. Barr	1952	-	Vice President	Wisc.
William J. Grede	1953	-	Chairman of Executive Committee	Wisc.
William B. Peters	1955	-	Vice President and Treas.	Wisc.
Marc B. Rojtman	1957	-	Executive Vice President and General Manager	Wisc.
A. O. Choate	1914	- 1957		N. Y.
William Ewing	1920	-		N. Y.
H. S. Sturgis	1927	-		N. Y.
E. P. Hamilton	1953	-		Wisc.
Edward L. Elliott	1957	-		N. J.
Mentor Kraus	1957	-		Ind.
Herbert H. Bloom	1957	-	President of J. I. Case International S.A.	Wisc.
Allen Northey Jones	1957	-		N. Y.

b) *Continental Motors Group*

Defendant	Citizen of
C. J. Reese	Michigan
C. W. Johnson	Michigan
Earl Ginn	Michigan
Wesley Todd	Wisconsin
H. W. Vandeven	Michigan
John W. Mulford	Michigan
Joan M. Dixon	Michigan

c) *Elliott Group*

Defendant	Relationship to Other Parties Defendant	Citizen of
Ellen B. Elliott	Wife of Edward L. Elliott	N. J.
Elliott & Company,	A partnership composed of Edward L. Elliott, Edward A. Walsh and Richard Pistell	N. Y.
John B. Elliott	Son of Edward L. Elliott	N. J.
[fol. 337]		
Mary E. Elliott	Daughter of Edward L. Elliott	N. J.
Edward A. Walsh	Partner of Elliott & Company	N. Y.
Edna Walsh	Wife of Edward A. Walsh	N. Y.
Richard Pistell	Partner of Elliott & Company	N. Y.
Janet Pistell	Wife of Richard Pistell	N. Y.

d) *Gilligan Will Group*

Defendant	Relationship to Other Parties Defendant	Citizen of
Gilligan Will & Co., a partnership	Partnership composed of James Gilligan and William Will	N. Y.
James Gilligan	Partner of Gilligan Will & Co.	N. Y.
William Will	Partner of Gilligan Will & Co.	N. Y.
Louis W. Alter	Partner or employee of Gilligan Will & Co.	N. Y.
Vernonica Gilligan	Wife of James Gilligan	N. Y.
Nathaniel C. Beeber	Broker trading through Gilligan Will & Co.	N. Y.
R. Howe	Partner or employee of Gilligan Will & Co.	N. Y.
L. E. Howard	Partner or employee of Gilligan Will & Co.	N. Y.
E. Kalik	Partner or employee of Gilligan Will & Co.	N. Y.

e) *Other Defendant*

	Relationship to Other Parties Defendant	Citizen of
Lillian B. Rojtman	Wife of Marc B. Rojtman	Wisc.

A majority of the directors of Case are named as defendants. All defendants who are now Case directors are sued individually and in their capacities as such directors. Defendants Jones and Bloom became Case directors after the events complained of herein and are named as defendants only for the purpose of securing relief. Marc B. Rojtman (hereafter referred to as "Rojtman"), and Edward L. Elliott (hereafter referred to as "Elliott"), are sued individually and as representatives of all ATC shareholders who received Case common and second preferred stock in consequence of the Case-ATC merger. Such shareholders constitute a class so numerous as to make it impracticable to bring them all before the Court. All such shareholders are made parties as a class for the purpose of securing certain relief herein requested against this class. The interests of all members of such class are fairly and adequately represented by Rojtman and Elliott. Nathaniel C. Beeber is sued individually and as a representative of [fol. 338] all holders of common stock purchase warrants issued by ATC to the purchasers of its preferred stock, Series 56-1. Such holders constitute a class so numerous it is impracticable to bring them all before the Court. All such holders are made a class for the purpose of securing certain relief herein requested against this class. The interests of all members of the class are fairly and adequately represented by Beeber. All defendants are citizens and residents of states other than Illinois.

[fol. 339] 5. Jurisdiction is conferred on this Court by Section 1332 of the Judicial Code in that there is diversity of citizenship between the plaintiff and all defendants and in that the sum or value in controversy, exclusive of interests and costs, exceeds $3000.

6. This action is not a collusive one instituted for the purpose of conferring upon a court of the United States jurisdiction of a cause of action over which it would not otherwise have cognizance.

7. Plaintiff brings this action to secure relief from a purported statutory merger between Case and American Tractor Corporation ("ATC"), formerly a New York corpo-

ration, and from amendments to a stock option plan which purportedly were adopted by Case. Both the merger plan and stock option amendments purportedly were approved by the shareholders of Case at a special meeting held on November 15, 1956. The merger plan, which required the favorable vote of two-thirds of the outstanding common and preferred stock, each voting separately as a class, was declared approved by a close margin. It received only 1,592,474 favorable votes, only 83,964 more than the 1,508,510 votes necessary. This action was filed on November 13, 1956, shortly before the November 15, 1956 shareholders' meeting. On January 10, 1957, Case and ATC purportedly completed action required under the laws of Wisconsin and New York to consummate the merger. Both the merger and stock option proposal were formally announced to the shareholders about October 15, 1956 by means of a brochure which included a letter dated October 15, 1956, from J. T. Brown, President and Chairman of the Board of Directors of Case, a notice of the November 15, 1956 special meeting of stockholders and a proxy statement describing the plan. Also included were the plan of merger, articles of merger and certificate of consolidation. The brochure is attached to the original complaint as Exhibit A. and is incorporated herein by reference.

II. *The Case-ATC Merger—Wrongful Acts of Case Directors*:

8. Case is a full line producer of farm machinery, including tractors and all of the equipment generally used in plowing, tilling, fertilizing, planting and seeding, cultivating, making silage and harvesting grains, seeds, corn and many other crops. In addition, it produces and sells for non-farm use wheel tractors and power engine units. It [fol. 340] and its predecessors have been in the farm machinery business since 1842.

9. As of July 31, 1956, Case had a net worth of $90,516,105. The shareholders' equity was represented by:

Preferred Stock, 7% $100 par, Authorized, 101,825, issued 92,906	$ 9,290,600
Common Stock, $12.50 par, Authorized, 4,000,000, issued 2,262,706	28,284,575
Paid-in Surplus	10,008,314
Earned Surplus	42,932,616
Total Net Worth	$90,516,105

Book value of common stock was about $36.00 per share. The Case balance sheet as of July 31, 1956 is set out on pages 24 and 25 of the Proxy Statement.

10. Immediately after World War II and continuing through the Korean War, Case enjoyed good sales and earnings, but from about 1952 to 1956 the situation was less bright. Sales decreased from about $153,000,000 in fiscal 1952 to $95,000,000 in fiscal 1955, while profits fell from over $7,000,000 to less than $1,000,000 in the period. (The fiscal year ends October 31). Dividends were affected: $2.50 per share was paid on common in fiscal 1952; $2.00 in 1953, $.50 in 1954 and none in 1955. The falling sales, earnings, and lack of dividends were reflected in the market price of the common stock: In calendar 1955 the high was only 19½ despite the flurry mentioned below, in contrast with a high of 36½ in 1952. As the 1956 fiscal year progressed, it was apparent that sales were continuing to fall and that a loss for the year would be sustained. Nevertheless, the company's fundamental position was sound; its products enjoyed an excellent reputation, its liquid position was good, and losses to date relatively small.

11. The directors of Case in large part, were a dispersed group whose principal interests lay with other business concerns and who were not able to devote any great portion of their time to Case affairs. According to the proxy statement the Case directors owned collectively only about 30,710 shares of Case common stock with individual holdings ranging as follows: two directors owned 16 and 100 [fol. 341] shares each, three owned blocks of approximately 1000 shares each, five owned blocks of approximately 2000

shares each and two others owned 4,276 and 12,900 shares each. As a group they were advancing in years. About August 1955 the directors established a five-man executive committee of the board of directors which included defendant Brown, Chairman of the Board of Directors and President, defendant Grede, who became Chairman of the Executive Committee in July 1956, and C. M. Robertson, general counsel of Case. (Brown, Grede and Robertson are hereafter referred to as the "management group"). The management group, after August 1955, formulated the major business decisions of Case. Brown, Grede and Robertson respectively owned 2420, 1100 and 2000 shares of Case common stock. The directors, other than the managing group, as more fully alleged below, failed to exercise independent judgment as to crucial decisions involving Case.

12. The company's immediate situation was of great concern to the management group. They had reason to fear and did fear that the company would become the target of "liquidators" and "raiders"—persons who would seize control of the company by a proxy fight and thereafter possibly bring about a merger with another company on terms unfavorable to Case or to themselves, or take some other action of a related character. In the Fall of 1955 Brown had been approached by one person claiming to control a large block of Case stock who proposed the sale of the Case assets to a corporation to be dominated by himself and his associates. This proposal was presented to the Board of Directors, considered and rejected. In late 1955 there was a sudden flurry in Case common stock on the New York Stock Exchange during which the stock advanced on large volume trading. This incident gave the management group cause to fear that "raiders" were buying up Case common intending to initiate a proxy war. Their grounds for fear were further enhanced by the circumstance that increasing amounts of stock were being registered in "street names", i.e., in the name of stock brokerage houses, rather than in the names of the beneficial owners.

The management group feared the result of a proxy fight. The directors themselves owned or controlled much

less than 2% of the stock, the bulk of which was widely scattered among thousands of holders. In the event of a contest, if in fact "raiders" had acquired the stock, the only [fol. 342] large holding would be opposed to them while the numerous small shareholders, disaffected by falling sales, earnings and stock market prices and lack of dividends, might well vote for new management.

13. Because of the facts alleged above, the management group began a search for a merger which would allay shareholder unrest and solidify their position in the event of a proxy contest. Inquiries were made concerning several companies. Negotiations, which ultimately collapsed, were undertaken by the management group with Oliver Corporation and Minneapolis-Moline Co., during the course of which all directors in general were kept fully informed or actively participated in the negotiations. In addition to these negotiations, negotiations were opened with ATC about January 1956.

14. ATC, founded in 1948, commenced producing crawler tractors and related attachments in a plant at Churubusco, Ind. Since ATC bought the principal components such as engines, transmissions, etc., it was engaged largely in an assembly operation.

15. As of July 31, 1956, according to the balance sheet, page 31 of the Proxy Statement, ATC had net assets of $2,525,653. The shareholders' equity was represented by:

Convertible preferred stock, Series 55-1 $20.00 par, 12,500 shares	$ 250,000
Convertible preferred stock, Series 56-1 $20.00 par, 50,000 shares	1,000,000
Common stock, 25¢ par, 2,000,000 shares authorized 1,107,704 shares outstanding	276,926
Paid-in surplus	619,076
Earned surplus	379,651
	$2,525,653

There were then outstanding 50,000 warrants to purchase 90,000 shares of ATC common at $16.00 per share and options to purchase 9,547 shares of ATC common. Book value of the common stock was about $1.15 per share.

16. In the Summer of 1956 the position of ATC was critical because of lack of working funds: as of July 31, 1956, ATC had only about $281,000 in cash to meet current liabilities, as shown on the balance sheet, of about $2,350,000, and in addition thereto, $542,000 owing on July 31, [fol. 343] 1956, due in future periods for machinery and equipment rental. Borrowing was almost out of the question because a large part of the accounts receivable had been pledged to secure loans, and all fixed assets were encumbered by first and second mortgages on which heavy fixed payments were due. Moreover, ATC was contingently liable for about $1,199,000 on conditional sales contracts sold to a bank.

Earnings and losses from January 1, 1952 to July 31, 1956 were as follows:

Year ended	12/31/52	$ 39,908 loss
8 mos. ended	8/31/53	88,814 loss
Year ended	8/31/54	166,871 loss
Year ended	8/31/55	346,782 profit
11 mos. ended	7/31/56	306,211 profit

Average profit for this period on an annual basis was about $78,000. No dividends were ever paid on the common nor could any dividends be paid so long as a $900,000 first mortgage remained outstanding.

17. The status of the Case-ATC negotiations to January 25, 1956 were summarized by Brown and Frederick Nymeyer, a director, at a meeting of the Executive Committee on January 25, 1956. The report of the Executive Committee for that date states:

> "In reporting on the discussion with Mr. Rojtman concerning the possible sale of the American Tractor Company to the J. I. Case Company, Mr. Brown and Mr. Nymeyer stated that Mr. Rojtman's first offer was a straight share for share exchange of J. I. Case stock

for American Tractor stock. Mr. Rojtman made this offer on the basis of the market value of $15 for the American Tractor and $17 for the J. I. Case Company. He was informed that any transaction would have to take into consideration the wide difference in the book value of the two stocks, which are, Case $37.75 and American Tractor 91 cents. When Mr. Brown had indicated that Case might be interested in paying cash for some American Tractor stock, Mr. Rojtman indicated that he thought Case could buy approximately 40% of the American Tractor stock for $15 or $16 a share, and that the holders of the remaining 60% of the stock (including his own holdings of 50%) would be willing to take one share of Case for each two shares of American Tractor Company. Both Mr. Nymeyer and Mr. Brown feel that such an arrangement would result in the Case Company paying too high a price for the American Tractor Company, but no further negotiating was done with Mr. Rojtman because of lack of time.

"In reporting on the situation, Mr. Brown stated that it was his opinion that we were too far apart at this time to reach any agreement. He felt that the Case Company would be willing to pay $8,000,000 or $9,000,000 for the American Tractor Company, but that before such an arrangement was made, if it became possible to do so, he would want to"

[fol. 344]

"1. Thoroughly investigate the product of the American Tractor Company as to performance, reputation, and marketing outlets.

"2. Investigate the design, new development, and patent situation, and

"3. Determine more accurately how much additional money the Case Company would have to invest in the Company in order for it to handle the projected volume of business."

18. About February 1, 1956 Brown ordered a report from William E. Hill and Company, management consult-

ants, regarding ATC. This report, which was delivered March 12, 1956, pointed out that the market for small crawler tractors, ATC's principal business, was limited to light construction and special tasks not including roadbuilding. The Hill report concluded that ATC could compete successfully in the manufacture of small crawler tractors and in time secure a substantial part of this market with annual sales of $20,000,000 to $34,000,000. The report also concluded that ATC could not compete successfully in the larger tractor field since it would experience immediately the heavy competition of several large well established firms. The report suggested that a more thorough study be made in the event Case wished to negotiate further with ATC.

19. After Brown received the Hill report the ATC negotiations collapsed. About July 1956 Grede became chairman of the executive committee and about this time the management group, without consultation with all of the other directors, renewed negotiations with ATC. Again, as in the January negotiations, Rojtman insisted upon a merger based on the relative market prices of Case and ATC common which meant a price of about $17,000,000 for ATC. The Case negotiating committee yielded in principle to this demand despite the previous opinions expressed by Brown and others, despite the fact that for the reasons alleged below the market price of ATC was an unreliable index of value, despite the gross disparity in book value (Case $36.00 per share, ATC $1.15) and despite all the other facts herein alleged which made such a basis of exchange unfair to the Case common stockholders. They agreed to the merger terms, moreover, without making the investigation which Brown had indicated should be made prior to making an agreement with ATC.

Early in August a meeting was held between the Case management group which acted as the Case negotiating [fol. 345] committee and the ATC negotiators (consisting of Rojtman, Elliott and Kraus) at which the major terms of the merger were agreed upon, subject to the approval of the directors of the two companies. Under the agreement, each share of ATC common was to be exchanged for one-half share of Case common, plus one share of a new Case second

preferred. The 50,000 ATC warrants outstanding, authorizing the purchase of 90,000 shares of ATC common at $16 per share were to be convertible on the same basis as ATC common, i.e., for each 5/9ths warrant plus $16 the holder would be entitled to receive one-half share of Case common plus one share of the new Case Second preferred. In addition, Case agreed to rescue ATC from its financial crisis by the purchase of $1,000,000 of ATC stock. This stock was to consist of 50,000 shares of a new ATC $20 par convertible 5% preferred. This purchase was to be made immediately upon approval of the plan by the directors and before shareholder ratification of the merger plan. For an additional $500.00 Case was to receive 50,000 warrants, good until September 24, 1959, to purchase 90,000 shares of ATC common at $16 per share. Upon consummation of the merger these warrants were to be cancelled. Further, upon consummation of the merger Case agreed to supply all funds necessary (totalling $2,362,500) to retire at $21 per share all outstanding ATC preferred, including the new issue to be purchased by Case. Three ATC directors (Rojtman, Kraus and Elliott) were to become Case directors, (a condition Rojtman and Elliott had early insisted upon) and Brown and Rojtman were to be on the Executive Committee. A major point of dispute was whether Brown or Rojtman was to be president of Case after the merger. Under the terms agreed upon Brown remained President and Chairman of the Board of Directors but as stated in Brown's letter to the shareholders, Exhibit A to the original complaint p. 2, Rojtman became "Executive Vice President and General Manager with responsibility for and authority over the general management of the business affairs of Case."

Also part of the merger agreement was a stock option provision: the Case stock option plan was to be amended to increase the share limit to one person from 10,000 to 25,000 and the total number allocable from 100,000 to 250,000. Brown was to receive an option to purchase 19,000 shares in addition to the 6,000 share option previously [fol. 346] granted to him, and Grede and Rojtman each were to receive options to purchase 25,000 shares. The purchase price specified in the options, which were to have a

life of ten years, was to be the fair market value of the stock at the time of granting the option. These options were granted on January 10, 1957.

The merger terms were incorporated into a memorandum which set out the terms as above and in addition fixed the dividend rate on the second preferred at 6½% and the par value and redemption price at $7.00 and $7.35, respectively. This memorandum was dated August 24, 1956 but in fact the principal terms had been agreed to by the management group early in August.

20. About the middle of August 1956, the Case management group met informally with a number of the directors. The directors present advised the management group to continue to negotiate in order to obtain the best terms possible. In truth, however, the management group had already committed itself to the principal terms of the merger and was unable or unwilling to negotiate better terms.

21. The market value of the Case common to be exchanged for ATC common pursuant to the August agreement was almost $8,000,000 and the total par value of the $7.00 6½% second preferred about $7,750,000. In addition, Case agreed to pay $1,312,500 to redeem the ATC preferred outstanding (other than the preferred held by Case itself). Hence the total price to Case of the net assets of ATC was about $17,000,000, or precisely as alleged below, $17,078,051. This sum exceeded by at least $8,000,000 the price which Brown earlier had stated Case should be willing to pay and exceeded by about $3,000,000 Rojtman's own January, 1956 asking price.

22. At a meeting of the directors on September 6, 1956 Grede presented to the directors the memorandum of terms agreed upon dated August 24 and thereafter the directors formally approved without a single change all of the terms subject to questions of law, taxes, etc. On September 24, 1956, the directors of Case gave final approval to the merger and the same day, before shareholder approval of the merger, Case purchased $1,000,000 ATC preferred as required by the merger agreement and in addition, for $500, [fol. 347] purchased the 50,000 warrants described above.

Despite the grave importance of the merger to Case and the Case shareholders both meetings were of a pro forma character and were dominated by the interested management group. After the proposals had been presented by the management group the other directors voted approval with scarcely any consideration or discussion even though Grede and Brown, two of the directors who had negotiated the terms of the merger, were to be the beneficiaries of stock options upon approval of the merger. The other directors failed to make an independent investigation of the facts and did not exercise independent judgment in approving the merger. The management group, by reason of their self-interest, could not and did not exercise independent judgment in voting for the merger. Some of the directors were not even acquainted with the Hill report. Thus the Case common shareholders were deprived of the benefit of the informed, impartial and independent judgment of these directors. Had they made such an independent study and exercised independent judgment they would have known the facts set out in this complaint and would have been under a duty to vote against the merger proposal.

23. Further, the Case directors, instead of valuing the assets of ATC, and then determining the stock to be issued therefor, improperly proceeded in reverse order; they first agreed to the number of Case shares to be issued, which had a total par value of $14,757,068, and then arbitrarily fixed the value of the ATC assets to be received at precisely this sum, namely, $14,757,068. This arbitrary valuation was fixed in a pro forma manner at a meeting of the directors on October 1, 1956, subsequent to their approval of the merger terms on September 6, 1956 and September 24, 1956.

24. At no time did the directors of Case make or cause to be made an independent appraisal of the value of the ATC physical assets to be received by Case. At the October 1, 1956 directors' meeting, however, the directors in pro forma manner voted to value the physical assets of ATC at about $2,943,213, purporting to rely on an appraisal prepared by W. F. MacConnell and Co. This firm had done appraisal work for ATC for some years prior to the merger and in fact the MacConnell appraisal relied upon by the

Case directors was ordered by ATC several months prior to the merger. Moreover, when the Case directors made the [fol. 348] valuation on October 1, 1956, some of them had never seen the appraisal while others had never even heard of it. The valuation fixed in this capricious manner was more than double the book value of the assets on the books of ATC.

25. The then directors of Case in approving the merger plan, in authorizing the purchase of $1,000,000 ATC preferred, and in recommending the merger proposal to the shareholders violated their fiduciary responsibilities to the shareholders by reason of the following which they knew or should have known:

a) *The price paid for ATC was excessive in relation to ATC earnings:*

ATC in its most prosperous year earned less than $350,000 or about 32¢ per share giving effect to the 1955 stock split, and thus a purchase price exceeding $17,000,000 was more than fifty times the earnings for the company's best year, a grossly excessive ratio. Thus, the price, even on the basis of ATC's best year, is grossly excessive. If the $78,000 average earnings of ATC from 1952 to 1956 are considered (about 7¢ per share) the purchase price becomes about 218 times earnings.

b) *In respect to earnings ATC was grossly overvalued and Case grossly undervalued:*

For the period from fiscal 1951 to July 1956 the average earnings of Case common were $.81 per share. For purposes of the merger, Case exchanged for each share of ATC stock—average earnings about 7¢, one-half share of Case common (average earnings 40½¢ plus 1 share $7.00, 6½% second preferred, dividend 45½¢ a total of $.86. An exchange on this basis was grossly unfair to the Case common shareholders.

c) *In respect of book value, ATC was grossly overvalued and Case grossly undervalued.*

As appears from the statement of financial condition of ATC (Proxy Statement page 31) the book value of the assets of ATC acquired by Case was $2,525,653. The book value of ATC common stock only was about $1,275,653 or about $1.15 per share in contrast with a book value of $36 per share for the common stock of Case. Not considering the inflated value placed on ATC assets, on a book value basis ATC shareholders received about $20.26 in book value for each of their shares (one-half share Case Common, book value after the merger $13.26 plus one share Case second preferred, par $7). In total, ATC shareholders received [fol. 349] Case common stock having a book value of about $14,685,799 plus preferred stock paying 6½% dividends, and having a par value of $7,753,928 or a total of about $22,400,000 in exchange for shares which had a book value of $1,275,653. The book value exchange ratio which was in excess of 17 to 1 was grossly unfair to the Case common shareholders.

d) *The directors wrongfully relied on the market price of ATC common as a measure of value of ATC.*

The directors of Case and particularly the management group placed great weight on the stock market price of ATC common in agreeing to the terms of the merger. The market price, however, of the stock of a new company marketing unproved products without established earnings is not a proper index of value. Further, the stock market price for ATC common was not a free market price.

e) *The Case directors improperly considered as an element of value the projected future earnings of ATC.*

From time to time in the course of negotiations, Rojtman presented to the Case management group his estimates of the future sales and earnings of ATC. The management group and the other Case directors relied to a substantial

extent on these estimates in placing a value on ATC. Because ATC was a new company whose brief business life had been marked by losses in three out of the past five fiscal periods, future earnings were so speculative in nature they were incapable of valuation and as a matter of law should not have been used as a basis for valuation. Moreover, the worth of ATC's products was undetermined; none of the small models of crawler tractors had been in service for long and some of the medium size tractors were not yet in production. Important design changes had been constant during the brief history of ATC and hence it was impossible to judge how they would withstand service. Further, future earnings were an improper test of value because of the company's limited growth potential.

f) *The Case directors failed to give proper weight to the large investment to be required to continue ATC operations:*

The directors of Case failed to consider that even the $17,000,000 price would not represent the full cost of ATC [fol. 350] to Case. At the time of the merger, ATC was so critically short of cash that it was scarcely a viable entity, and in fact it was necessary for Case to invest $1,000,000 in ATC before shareholder approval of the merger so that it could survive. Merely to finance its current level of operations, ATC required a considerable sum in cash in addition to this $1,000,000. These sums are part of the real cost of ATC to Case.

g) *The directors improperly considered as an element of value the future services to be rendered by Rojtman and other officers of ATC.*

The Case directors in valuing ATC improperly included as an element of value the future services of Rojtman and other ATC officers. Future services are never an element of value.

The directors of Case, moreover, did not include as one of the merger terms, a contract by Rojtman to devote his services to Case. Since he is thus free to leave Case at any

time, his future services for this further reason, were not a proper element in valuing ATC.

h) *The directors of Case failed to make an independent appraisal of the assets of ATC as an entity and of the value of the physical assets of ATC.*

The directors of Case failed to make an independent appraisal of the assets of ATC as an entity and of the value of the physical assets of ATC.

i) *The directors placed control of Case in the hands of Rojtman, Elliott and the Elliott group.*

Prior to the ATC merger the Case common stock had been widely scattered among thousands of shareholders no one of whom was able to exercise a predominant voice in the affairs of the corporation. As a result of the merger, however, approximately 80 per cent of the 553,852 shares of Case common issued, or about 440,000 shares out of about 2,800,000 shares of Case common outstanding were concentrated in the hands of Rojtman, Lillian Rojtman, Elliott, Ellen B. Elliott, the Continental Motors group and the Elliott group. The roles of these persons and groups in ATC are set out below. Because of the dispersion of the ownership of the Case stock this block of stock, amounting to about 15% of the common outstanding, constitutes effective working control of the Case company. In the event of shareholder dissatisfaction with the company's management, it is now exceedingly difficult for the shareholders to [fol. 351] secure effective redress because of the concentration of power achieved.

26. The directors of Case in approving the merger plan, in authorizing the purchase of $1,000,000 ATC preferred and in recommending the merger proposal to the shareholders violated their fiduciary responsibilities to the shareholders and violated the Wisconsin Business Corporation Law by reason of the following:

a) Section 180-14(1) of the Wisconsin Business Corporation Law, as amended, provides:

> "Shares having a par value may be issued for such consideration, not less than the par value thereof, as shall be fixed from time to time by the board of directors."

Section 180-15(1) provides:

> "The consideration for the issuance of shares may be paid, in whole or in part, in money, in other property, tangible or intangible, or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued shall have been received by the corporation such shares shall be deemed to be fully paid, and non-assessable by the corporation."

Section 180-15(3) provides:

> "In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive."

b) The directors violated Sec. 180-15(1) in that they included the future earnings of ATC and the future services of Rojtman and other ATC officials as part of the consideration paid by ATC for the issuance of Case shares. Such future earnings and future services are not valid consideration.

c) In fixing the consideration for the shares of stock to be issued by Case to ATC for the assets of ATC, the Board of Directors of Case violated Section 180-14(1), in that the consideration fixed was less than the par value of such securities.

The directors of Case fixed what they describe as "the minimum fair value of the net assets of ATC to be acquired in the merger" at $14,757,068. (Proxy Statement page 40). [fol. 352] The par value of the Case securities issued was $14,677,078, determined as follows:

1,107,704 shares of 6½% Second Cumulative Preferred Stock, $7 par value—	$ 7,753,928
553,852 shares of Common Stock, $12.50 par value	6,923,150
	$14,677,078

As part of the merger agreement Case agreed additionally to redeem the preferred stock of ATC at a cost to Case of $2,362,500. Of this sum $1,050,000 was received by Case in redemption of the ATC preferred purchased by it on September 24, 1956 but $1,312,500 was paid to third parties and hence this sum must be deducted from the $14,757,068 found to be the minimum fair value of ATC assets. Hence the consideration received for the shares is $13,444,568 which is $1,232,510 less than par value.

d) Further, since the 50,000 outstanding warrants to purchase ATC common at $16 became warrants to purchase one-half share of Case and one share of Case second preferred at $16, these warrants of themselves had a monetary value. This monetary value must also be deducted from the $14,757,068 and hence the difference between the assets received and the par value of the Case stock issued is even greater than $1,232,510.

e) In fixing the consideration paid for the shares of Case stock issued to ATC stockholders upon consummation of the merger the directors further violated the requirements of Section 180-14(1) of the Wisconsin Business Corporation Act by making a determination of the "minimum fair value" of the assets received from ATC. The directors were under a clear statutory duty to fix the consideration at a specific amount.

f) The directors of Case did not in fact make the valuation required by Sec. 180-14(1) of the Wisconsin Business Corporation Act for the reason that the purported valuation placed on the assets of ATC represented merely a mechanical computation determined to equal the par value of the stocks which by the terms of the merger agreement Case was obligated to issue to the shareholders of ATC.

[fol. 353] 27. The facts respecting the gross and unjustified over-valuation of ATC assets, in relation to book values and earnings are summarized in the following table:

Table I

Relative Book Values and Average Earnings of Case and ATC Common.

I *Book Values*	*Case Common Shareholders*	*ATC Common Shareholders*
Book value of stock before merger	$81,225,505	$ 1,275,653
Per cent of total book values of Case and ATC (preferred excluded)	87.30%	1.37%
Book value after merger	$59,998,931*	$22,439,727*
Per Cent of total book value in merged companies	65.41%	24.46%
II *Book Values Per Share*		
Before merger	$35.90	$ 1.15
After merger	$26.52	$20.26
III *Average Earnings***		
Before merger, after deducting preferred dividends	$. 1,830,718	$ 15,476

* Not considering inflated values placed on ATC assets, ATC shareholders received for each share of ATC, 1 share of Case second preferred $7.00 par ($7,753,928) and one-half share of Case common book value $13.26 ($14,685,799).

** For Case, fiscal years 1951-1955 and nine months to July 31, 1956. For ATC, calendar 1952 to July 31, 1956. Prior periods not available.

	Case Common Shareholders	*ATC Common Shareholders*
Per cent of total earnings of Case and ATC (preferred excluded)	71.54%	.61 of 1%
After merger, after deducting dividends on Case $100.00 par preferred	$ 1,128,489	$ 780,205
Per cent of total earnings of merged companies (Case $100 par preferred excluded)	44.10%	30.49%

[fol: 354]

IV

Average Earnings Per Share		
Before merger	.81	.07
After merger	.50	.70½

28. For all the reasons alleged herein, the overvaluation of the ATC assets was so gross and so completely unjustified as to constitute a constructive fraud upon the Case common shareholders.

[fol. 355]

III. *Invalidity of the Stock Options—*

29. The 25,000 share option to Grede was void for the following reasons: The stock option plan as adopted at a meeting of the Stockholders on April 17, 1952, provided that only "employees of the company" were to be eligible, a term which was defined as follows:

> "The term 'employees of the Company' shall include employees of any subsidiary of the Company, shall include officers as well as other employees of the Company, or any subsidiary, and shall include directors of the Company who are also active officers of the Company or any subsidiary".

At no time has Grede been an officer or an employee. Grede's sole position with Case has been as a director and hence under the Plan he was not eligible to receive a stock option. Consequently, the granting of the option to Grede was void.

The stock options to Brown and Grede were void for the further reason that they negotiated the stock options for themselves while representing Case in the merger negotiations.

30. Grede Foundries, Inc., in which Grede has a controlling interest, was a supplier of castings to both Case and ATC prior to the merger. After the merger sales increased substantially. Sales of Grede Foundries Inc. for its 1955 and 1956 fiscal years (ending October 31) to Case and ATC were $32,935 and $38,533, respectively. For fiscal 1957, which includes the first ten months after the merger, sales were $435,073.

IV. *History of ATC and Wrongful Acts of Rojtman, Lillian Rojtman, Elliott, Elliott Group, Continental Motors Group and Gilligan Will group:*

31. a) In 1952 ATC experienced serious mechanical failures as a result of which heavy losses were incurred from January 1952 through August, 1954. These losses were incurred partly because of customer allowances and adjustments, the adverse effect of these failures on customer and dealer relations and partly because of a change in the method of product distribution.

[fol. 356] As a result of continued losses, in the Spring of 1954 the company was in serious financial straits. The earned surplus balance as of August 31, 1954, showed a deficit of $247,000 and was doubtless substantially that amount in the Spring of the year.

b) Elliott, the senior partner of Elliott and Company, a New York stock brokerage partnership which he had established shortly before, saw in ATC an opportunity for a stock promotion. In May 1954, Elliott negotiated for ATC a loan of $250,000 from a New York bank and at the same time formed a syndicate composed of his wife, Ellen B.

Elliott and persons largely connected with the Continental Motors Corporation (the Continental group) who lent ATC $250,000. Under the loan agreement Elliott and Company was given the option of buying within 5 years at one cent each 20,000 warrants authorizing the purchase of 20,000 shares of ATC common at fifty cents a share and Elliott, as leader of the group of investors, was given a similar option to buy 150,000 warrants. The warrants were issued on May 18, 1954 and were distributed by Elliott to the Continental group and to Ellen B. Elliott who received 60,000 warrants. The $1700 payment for the warrants was made some time prior to August 31, 1954 and by August 31, 1954 all of the warrants were converted into common stock.

c) Since the loans and sale of warrants in May 1954 exceeded $300,000 Elliott devised a plan for ATC to avoid registration of the securities under Section 5 of the Securities Act of 1933, 15 U.S.C. §77e, which would have entailed the issuance of a formal prospectus and the revelation of ATC's weak financial condition and recapitalization. Such a revelation would have impeded the stock promotion plan. Elliott avoided SEC registration through recourse to the private offering exemption of Section 4 (1) of the Securities Act of 1933, 15 U.S.C. §77(d). He represented to ATC in the loan agreement that he was taking the note for himself and his principals as an investment with no intention of resale but significantly he failed to make similar representations as to the warrants and stock issuable upon exercise of the warrants. The limited representation made did not exempt the transaction from the Securities Act of 1933. [fol. 357] In a notification filed by ATC with the Securities and Exchange Commission on August 31, 1954, and signed by Rojtman, Elliott is alleged to have made additional representations as to the warrants and stock issuable pursuant to the exercise of the warrants. If in fact such representations were made by Elliott they were false because Elliott knew or should have known that the warrants were exercised almost immediately (all were exercised by August 31, 1954) and that some of the stock received therefore was sold or was to be sold to the public.

d. At or about the same time ATC planned to make a public offering through Elliott and Company of 24,000 shares of ATC common stock at $4.125 a share and on August 31, 1954, filed under Regulation A of the Securities Act of 1933 a simplified prospectus or offering circular permitted for offerings under $300,000. Elliott and Company had however, in violation of regulations of the Securities Act of 1933, sold to the public all of the 24,000 shares prior to the filing or approval of the offering circular. Moreover, the offering circular was false, misleading and fraudulent in several material respects:

1) The offering circular failed to state affirmatively that 170,000 shares of the same stock being offered in the circular at $4.12½ per share had just been sold at 5¢ per share to Elliott and Company and the Continental group associated with Elliott.

2) In order to conceal the above fact, it falsified ATC's financial statements as follows:

A balance sheet dated June 30, 1954 was included in the circular. This date was subsequent to the issuance of the penny warrants and in fact by June 30, 1954 some of them had already been converted into stock. Attached as an exhibit to the balance sheet was a statement of paid-in surplus which should have shown the receipt of the $1700 from the sale of the 170,000 penny warrants and thus given notice to the prospective purchasers that such warrants were outstanding. The receipt of this sum was, however, omitted from this statement;

[fol. 358]

3) Moreover, the issuance of the penny warrants was further concealed by stating that the number of common shares outstanding was 340,695, the number outstanding before the issuance of the warrants. In fact, the number of shares outstanding on June 30, 1954 was greater because of the conversion of some of the warrants into stock.

4) Further, the circular by implication represented to the prospective purchasers that there had been no

substantial change in the company's position since June 30, 1954 to its date of issuance, whereas in fact there had been a substantial decrease in the book value of the stock because of the sale of the 170,000 shares at fifty-one cents.

e. Over the counter trading began about July 1954 and on January 17, 1955 ATC common was listed on the American Stock Exchange with defendant Gilligan, Will and Company as the specialist in the stock. Defendant James Gilligan a partner in Gilligan, Will and Co., began to acquire and deal in ATC stock on June 6, 1954. Other partners or employees of Gilligan, Will and Co., including Louis W. Alter, L. E. Howard, R. Howe, William Will and E. Kalik and other persons who traded through Gilligan, Will and Co., including Nathaniel C. Beeber, all of whom are named defendants herein, dealt in ATC stock from 1954 until the merger between Case and ATC. A substantial amount of the total trading in ATC stock was transacted through or by Gilligan, Will and Company.

f. From 1954 until the merger with Case, approximately 80% of the total outstanding stock of ATC was closely held by Marc Rojtman, Lillian Rojtman, Edward L. Elliott, Ellen B. Elliott, their families, friends and associates and the Continental group.

At various times these defendants held large blocks of their stock in the name of Gilligan, Will and Company and other brokers.

g. Commencing in June 1954 and continuing until the merger of ATC with Case, Elliott also initiated a concerted campaign of bringing ATC to the attention of stock brokers, analysts, security investment advisers and anyone else who might help promote ATC stock. Elliott himself brought many such persons to the ATC plant in Churubusco, Indiana.

[fol. 359] h. The total outstanding stock in the hands of the public was small. Total trading in ATC was relatively light with the price often changing widely on narrow trading.

32. Beginning in July 1954 the market price of ATC common enjoyed a spectacular rise. On August 18, 1955 the stock was split 2 for 1. The stock price ranges from the third quarter of 1954 to the third quarter of 1956 were:

	Before Split		*After Split and Adjusted for Split*	
	High	*Low*	*High*	*Low*
3rd Quarter 1954	5¾*	3**	2⅞*	1½**
4th Quarter 1954	12¾*	7**	6⅜*	3½**
1st Quarter 1955	19¼	12	9⅝	6
2nd Quarter 1955	30	19	15	9½
3rd Quarter 1955			14⅝	12¾
4th Quarter 1955			17⅞	13
1st Quarter 1956			16¼	13⅜
2nd Quarter 1956			14¾	13½
3rd Quarter 1956			15	12⅛

* High offer over-the-counter

** Low bid over-the-counter

33. The foregoing rise in price was attained notwithstanding that:

a) At all times 80% or more of the common stock was closely held by the Rojtmans, the Elliotts, their families, friends and associates and the Continental group.

b) At all times ATC was in a precarious financial condition.

c) ATC never paid a dividend on its common stock and in fact could not pay a dividend under the terms of its first mortgage.

d) ATC book value was about $1.15.

e) Prior to 1952 and for the years 1948-1951 inclusive, ATC had an earned surplus of only $49,542.

f) ATC had net losses of $39,908 in 1952, $88,814 in the eight months ended August 31, 1953 and $166,871 in the fiscal year ended August 31, 1954, and

net profits of $346,782 in fiscal 1955 and $306,211 in the eleven months ending July 31, 1956. Thus, in its best year (fiscal 1955), earnings were about 32 cents per share.

[fol. 360] 34. The foregoing facts and circumstances tend to show that from July 1954 until the merger with Case the stock market price of ATC was not achieved in a free and open market. Further, they tend to show that defendants Rojtman, Lillian Rojtman, Elliott, Ellen B. Elliott, James Gilligan, the Elliott Group, the Continental Motors group and the Gilligan, Will group knew that the market price of ATC common, was not achieved in a free and open market.

35. In the negotiations that eventuated in the merger between Case and ATC, Rojtman and Elliott, the ATC representatives, pressed for terms that would give full recognition to the market price of ATC common stock. It was a floor from which the ATC negotiators would not budge and from which the Case negotiators allegedly could not move. The Case directors relied on the stock market price of ATC in concluding that the terms offered to them were the best available and in determining the value of the consideration received for the issuance of Case stock.

36. The President's letter to the stockholders of J. I. Case, attached to the Case Proxy Statement, specifically refers to the stock market price of ATC in attempting to set forth to the Case shareholders the price Case was paying for ATC. The Case shareholders were led to rely upon and did rely upon the market price of ATC stock in determining to vote for the merger.

37. By reason of the unjustified price of ATC common and the Case-ATC merger the persons who received the 170,000 ATC penny warrants including Elliott and his wife Ellen B. Elliott, converted a total investment of $86,700 from an unrealizable paper profit to $4,333,800 into a realizable profit of that amount. Similarly, the Rojtmans, who had invested in ATC less than $100,000 initially, converted an unrealizable proper profit of approximately $5,900,000 into a realizable profit of that amount.

38. The Case management group knew or in the exercise of ordinary care should have known, and the other Case directors in the exercise of ordinary care should have known the foregoing facts which tend to show that the market price of ATC common stock was not achieved in a free and open market.

[fol. 361]

V. *False and Misleading Representations In and Material Omissions from the Proxy Statement:*

39. The directors of Case violated their fiduciary obligations to the Case common shareholders by permitting the issuance to such shareholders of Brown's letter of October 15, 1956 and the Proxy Statement of October 15, 1956. These documents contained numerous material omissions, false representations and misleading statements which, among others, include the following:

a) Brown's letter and the Proxy Statement fail to state expressly the total price Case paid for ATC. The price exceeded $17,000,000 computed as follows:

553,852 shares Case common at market	$ 7,961,623
1,107,704 shares Case 2nd preferred at par value	7,753,928
Cash to redeem outstanding ATC preferred (other than that held by Case).	1,312,500
Total	$17,028,051

b) The proxy statement, moreover, gives the false impression (p. 40) that the price being paid is the "minimum fair value" of the net assets of ATC as fixed by the directors, namely, $14,757,068.

c) The letter and statement fail to state that the book value of Case common was $36.00 per share and ATC common $1.15. The letter states that the net book worth of ATC adjusted to reflect the subsequent issue of 50,000

shares of ATC preferred to Case was $3,525,653, but fails to state explicitly that prior thereto ATC net book worth was only $2,525,653. The effect of this omission was to inflate the apparent value of ATC and reduce the disparity between the price paid by Case and the book value of the assets to be received.

d) The proxy statement which displays prominently on page 7 the comparative market prices of Case and ATC common stocks led the Case shareholders to infer that the proposed terms of merger were fair because in accordance with the comparative market price of the two stocks.

e) The letter and proxy statement fail to state that the $1,000,000 investment in ATC by Case was necessary to maintain ATC as a going concern until the merger would be consummated, and that after approval of the merger Case would have to invest additional millions of dollars for [fol. 362] working capital in order to continue operating ATC.

f) The prospectus states falsely (page 2) that the Case common "would not be affected" as a result of the merger, whereas in fact the Case common was affected substantially and adversely in the following particulars: The 1,107,704 shares of the new $7.00, 6½% preferred have a prior claim on earnings totaling about $500,000 per year. Until the earnings of ATC assets exceed $500,000 there will be no benefit whatever to the old Case common shareholders. In addition, there will be charges against earnings averaging about $680,000 per year for approximately 20 years for amortizing the $13,463,000 difference between the price of the ATC assets and their book value. This charge will be borne principally by the former Case shareholders.

The letter and statement fail to state explicitly that after the $500,000 and $680,000 have been charged to earnings, the Case shareholder group as constituted before the merger must share the remaining earnings with the holders of the 553,852 shares of Case issued to the holders of the ATC common.

g) The statement that the Case common will not be "adversely affected" is false for the further reason that

no statement was made apprising the Case shareholders that control of the Case Company was being placed in the hands of Rojtman, Elliott, the Elliott group and the Continental group.

The passing of control of Case to these persons was further concealed by a misstatement in the proxy statement that Ellen B. Elliott held only 5000 shares of ATC preferred when, in fact she also held 90,000 shares of ATC common.

h) While the letter and proxy statement overstate facts favorable to ATC, they tend to make the position of Case appear worse than it was in actuality. In particular, for ATC the prospectus sets forth the earned surplus account for the years from 1952 to a current date in 1956 (page 32). On page 26, however, similar information is presented with reference to Case for the period from 1953 to 1956. This fact is significant because in 1952 Case experienced a good year in which sales exceeded $153,000,000, net income exceeded $7,000,000 and earnings per share were $2.82, a sum more than double the book value of ATC com- [fol. 363] mon. Moreover, on page 26 of the proxy statement the net loss of Case for the nine months ended July 31, 1956 is stated to be $3,703,389. On the basis of this information the reader of the proxy statement would infer that the loss for the 1956 fiscal year would be approximately $5,000,000. In fact, however, the loss for 1956 was $987,000, an amount far less than the loss stated for the nine-month period. Since the letter and the prospectus were dated October 15, 1956, only two weeks short of the close of the 1956 fiscal year, the directors knew or should have known that the nine months' results gave a false picture of fiscal 1956.

i) The proxy statement fails to state that the recipients of the stock options were the persons who had negotiated the terms of the merger which included the stock options.

j) The proxy statement fails to reveal that Grede Foundries Inc., which is owned and controlled by William J. Grede, was a supplier of castings to Case and ATC.

k) The letter and proxy statement misstate that ATC was a then producer of medium size crawler tractors and

that Case would gain an immediate entry into the road-building and heavy construction equipment business if the merger were approved.

l) The proxy statement misrepresents ATC's current and prospective competitive situation.

m) The letter and proxy statement misstate that Case and ATC branches, dealers and distributors would be capable of handling the merged line of equipment.

40. These omissions, false representations and misleading statements in the letter and proxy statement were material to the merits of the merger proposal. The shareholders of Case relied thereon in voting on the merger. In view of the close margin by which the merger was approved, it would not have been approved if the letter and proxy statement had not contained such omissions, false representations and misleading statements.

VI. *Concluding Allegations*

41. Plaintiff and other holders of common stock of Case similarly situated to plaintiff have been severely and irreparably damaged by the plan of merger herein described and have no adequate remedy at law.

[fol. 364] Wherefore, plaintiff prays that this Court:

I. Declare and adjudge that the plan of merger is illegal and void and any action taken pursuant thereto is illegal and void.

II. Grant such of the following relief as it deems equitable.

a) Enter judgment in favor of the plaintiff and all other Case shareholders similarly situated and against the Case directors who approved the merger, Rojtman, Elliott and such of the other defendants as the Court finds responsible for the merger for $12,000,000; or

b) Enter a decree setting aside the merger and:

1) Ordering Case to establish a corporation under the laws of the State of New York bearing the name American

Tractor Corporation, or a similar name, having an authorized capital stock, charter and by-laws substantially similar to those of ATC on January 10, 1957 and thereupon transfer to such new corporation such assets and cause such new corporation to assume such liabilities as this Court deems equitable.

2) Ordering Case to direct all holders of shares received as a result of the merger, and their successors in interest, to surrender such shares to Case together with all dividends received thereon.

3) Ordering Case to issue to the persons described in (2) above one share of the common stock of such new corporation for each ½ share of Case common and each share of Case second preferred surrendered by them.

4) Ordering Case to cause the new corporation to issue to the holders of the 50,000 ATC warrants outstanding new warrants of the new New York Corporation with substantially the same conversion rights; and

5) Determining the damages suffered by Case as a result of the attempted merger and for judgment in favor of the plaintiff and all other shareholders similarly situated and against Rojtman, Elliott, the directors of Case who approved the merger and such of the other defendants as the Court finds responsible for the merger for the amount thereof; or

c) Enter a decree:

[fol. 365] 1) Determining the fair market value of the net assets of ATC acquired by Case.

2) Directing the ATC common shareholders who received Case stock as a result of the merger or their transferees to surrender to Case for cancellation such portion of the Case common and second preferred received by them, as the court shall deem equitable or

d) Enter a decree:

1) Determining the fair market value of the ATC net assets acquired by Case.

2) Directing Case to issue to plaintiff and all other Case shareholders similarly situated such securities of Case as

the Court shall deem necessary to make fair and equitable the relative interests of such shareholders and shareholders who acquired Case securities in the merger.

III. Declare and adjudge that the stock options granted to Grede, Brown, and Rojtman are illegal and void and ordering that said options be cancelled.

IV. Declare and adjudge that the common stock purchase warrants issued to the purchasers of ATC preferred, Series 56-1 may not be exercised for the purchase of Case securities as provided in the merger plan and cancel such warrants.

V. Grant such other and further relief, including allowances to plaintiff for his costs, disbursements and counsel fees, as equity shall require.

Alex Elson, Arnold I. Shure and Bruno V. Bitker,
Alex Elson, one of the attorneys for plaintiff.

Alex Elson, 11 South La Salle Street, Chicago 3, Illinois;

Arnold I. Shure, 11 South La Salle Street, Chicago 3, Illinois;

Bruno V. Bitker, 208 E. Wisconsin Ave., Milwaukee, Wisconsin,

Attorneys for Plaintiff.

[fol. 366] *Duly sworn to by Carl H. Borak, jurat omitted in printing.*

[fol. 367] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

No. 56 C 247

[Title omitted]

MOTION FOR ORDER DIRECTING CERTAIN DEFENDANTS TO APPEAR OR PLEAD—Filed April 2, 1958

Now Comes plaintiff by Bruno V. Bitker, Alex Elson and Arnold I. Shure, his attorneys, and state that the above action is a suit to enforce a claim to, or to remove an encumbrance, lien or cloud upon title to certain shares of stock and certain warrants to purchase shares of stock of the defendant, J. I. Case Company, a Wisconsin corporation, all as more fully appears in the Amended and Supplemental Complaint filed April 1, 1958. All of said property is situated in the district where this suit is brought. Defendants A. O. Choate, William Ewing, H. S. Sturgis, Allen Northey Jones, Edward L. Elliott, Ellen B. Elliott, Mentor Kraus, C. J. Reese, C. W. Johnson, Earl Ginn, H. W. Vandeven, John W. Mulford, Joan M. Dixon, Elliott and Company, a partnership, Mary E. Elliott, John B. Elliott, Edward A. Walsh, Edna Walsh, Richard Pistell, Janet Pistell, Gilligan [fol. 368] Will and Company, a partnership, James Gilligan, William Will, Louis W. Alter, Veronica Gilligan, R. Howe, L. E. Howard, E. Kalik and Nathaniel C. Beeber are not inhabitants of this district and have not voluntarily appeared herein. The states of residence of the above listed defendants and the addresses where they may be found are as set forth below:

Name of Defendant	*State of Residence*	*Address Where Defendant May Be Found*
A. O. Choate	New York	Clark, Dodge & Co. New York City, N.Y.
William Ewing	New York	Morgan Stanley & Co. New York City, N.Y.

Name of Defendant	*State of Residence*	*Address Where Defendant May Be Found*
H. S. Sturgis	New York	Sanderson & Porter New York City, N.Y.
Allen Northey Jones	New York	Morgan Stanley & Co. New York City, N.Y.
Edward L. Elliott	New Jersey	Elliott & Company 25 Broad Street New York City, N.Y.
Ellen B. Elliott	New Jersey	30 West Road Short Hills, N. J.
Mentor Kraus	Indiana	Third Floor, Utility Bldg. Ft. Wayne, Ind.
C. J. Reese	Michigan	Continental Motors Corp. 620 Ford Bldg. Detroit, Michigan
C. W. Johnson	Michigan	1516 Carleton St. Whitehall, Michigan
Earl Ginn	Michigan	1621 Moulton No. Muskegon, Michigan
H. W. Vandeven	Michigan	164 Washington Muskegon, Michigan
John W. Mulford	Michigan	Gray Marine Motor Co. 710 Canton Ave. Detroit, Michigan
Joan M. Dixon	Michigan	c/o John W. Mulford Gray Marine Motor Co. 710 Canton Ave. Detroit, Michigan
[fol. 369] Mary E. Elliott	New Jersey	30 West Road Short Hills, N. J.

Name of Defendant	*State of Residence*	*Address Where Defendant May Be Found*
John B. Elliott	New Jersey	Elliott & Co. 25 Broad St. New York City, N.Y.
Elliott and Company	New York	25 Broad St. New York City, N.Y.
Edward A. Walsh	New York	Elliott & Co. 25 Broad St. New York City, N.Y.
Edna Walsh	New York	c/o Edward A. Walsh, 25 Broad St. New York City, N.Y.
Richard Pistell	New York	Elliott & Co. 25 Broad St. New York City, N.Y.
Janet Pistell	New York	c/o Richard Pistell 25 Broad St. New York City, N.Y.
Gilligan Will & Company	New York	Gilligan Will & Company 123 Greenwich St. New York City, N.Y.
James Gilligan	New York	Gilligan Will & Company 123 Greenwich St. New York City, N.Y.
William Will	New York	Gilligan Will & Company 123 Greenwich St. New York City, N.Y.
Louis W. Alter	New York	Gilligan Will & Company 123 Greenwich St. New York City, N.Y.

Name of Defendant	*State of Residence*	*Address Where Defendant May Be Found*
Veronica Gilligan	New Jersey	86 Hillside Ave. Caldwell, N.J.
R. Howe	New York	Gilligan Will & Company 123 Greenwich St. New York City, N.Y.
L. E. Howard	New York	Gilligan Will & Company 123 Greenwich St. New York City, N.Y.
E. Kalik	New York	Gilligan Will & Company 123 Greenwich St. New York City, N.Y.
Nathaniel C. Beeber	New York	74 Trinity Place New York City, N.Y.

[fol. 370] Wherefore plaintiff moves for an order directing said defendants to appear and plead or answer in said cause by a day certain to be designated by this court and directing that said order be served upon the said defendants, together with a copy of the Amended and Supplemental Complaint, wherever found pursuant to Section 1655 of the Judicial Code, 28 U.S.C. § 1655.

Bruno V. Bitker, One of the attorneys for plaintiff.

Duly sworn to by Bruno V. Bitker, jurat omitted in printing.

[fol. 371] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

No. 56 C 247

[Title omitted]

ORDER DIRECTING CERTAIN DEFENDANTS TO APPEAR OR PLEAD —April 2, 1958

This Matter Coming on to Be Heard on the Motion of plaintiff by his attorneys Bruno V. Bitker, Alex Elson and Arnold I. Shure and it appearing that this action is a suit to enforce a claim to, or to remove an encumbrance, lien or cloud upon title to certain shares of stock and certain warrants to purchase shares of stock of the defendant J. I. Case Company, a Wisconsin corporation, all of which property is situated in this district and it appearing that defendants A. O. Choate, William Ewing, H. S. Sturgis, Allen Northey Jones, Edward L. Elliott, Ellen B. Elliott, Mentor Kraus, C. J. Reese, C. W. Johnson, Earl Ginn, H. W. Vandeven, John W. Mulford, Joan M. Dixon, Elliott and Company, a partnership, Mary E. Elliott, John B. Elliott, Edward A. Walsh, Edna Walsh, Richard Pistell, Janet Pistell, Gilligan Will and Company, a partnership, James Gilligan, William Will, Louis W. Alter, Veronica Gilligan, R. Howe, L. E. Howard, E. Kalik and Nathaniel C. Beeber are not residents of and cannot be found within this district and that they [fol. 372] have not voluntarily appeared in this action,

It Is Hereby Ordered that each of the foregoing defendants appear and plead or answer to the Amended and Supplemental Complaint on or before June 1, 1958 and that in default thereof the Court proceed to hearing and adjudication of this suit in the same manner as if the said defendants had been served with process within this district.

It Is Further Ordered that a certified copy of this order and a copy of plaintiff's Amended and Supplemental Complaint be served upon each of the said defendants within twenty-five days before the date above named by the re-

spective United States Marshals for the respective districts in which said defendants are residents or may be found.

Enter April 2, 1958

Robert E. Tehan, Judge of the United States District Court for the Eastern District of Wisconsin.

[fol. 536] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

No. 56-C-247

[Title omitted]

ORDER ON MOTION FOR SECURITY—October 23, 1958

This case having come on for hearing on April 28, 1958 and on October 13, 1958, on motion of the defendant, J. I. Case Company, for an order (1) requiring plaintiff herein to give defendant, J. I. Case Company security for costs in the sum of $1,000,000 pursuant to Section 180.405(4) Wisconsin Statutes, and (2) pending deposit of such security, staying all further proceedings on behalf of the plaintiff, and (3) directing that, if plaintiff should fail to give security within the time and in the manner directed, the Clerk of Court upon proof by affidavit by defendant, J. I. Case Company, that the plaintiff has failed to file the security within the time and in the manner provided shall enter judgment dismissing the action as to all defendants with costs, and briefs having been filed in connection with said motion, and the Court having heard oral argument and considered the briefs and being fully advised,

Now, Therefore, It Is Hereby Ordered:

1. That the plaintiff be and he is hereby directed to furnish the defendant, J. I. Case Company, on or before De-
[fol. 537] cember 12, 1958, with security for reasonable expenses, pursuant to Section 180.405(4) Wisconsin Statutes, including attorneys' fees, in the form of a surety bond of

a company duly licensed to write such bonds in the State of Wisconsin in the amount of $75,000, or cash in said amount, securing the defendant, J. I. Case Company, for its reasonable expenses, including attorneys' fees, in this action for which it may become liable by reason of the provisions of Section 180.407 Wisconsin Statutes, or,

2. That if the plaintiff fails to furnish security within the time and in the amount and manner provided in Item 1, judgment dismissing the action as to all defendants will be entered with costs.

3. That nothing herein contained shall be construed so as to prevent the plaintiff from seeking leave to file an amendment to his amended and supplemental complaint joining as additional parties plaintiff the holder or holders of at least 3% of the common stock of J. I. Case Company prior to December 12, 1958.

4. That the defendant, J. I. Case Company, will permit counsel for the plaintiff to examine its shareholder list of March 19, 1958, and any shareholder list prepared subsequent to that date as soon as it is available, at the offices of Robertson, Hoebreckx and Davis, Suite 720 Wells Building, 324 East Wisconsin Avenue, Milwaukee 2, Wisconsin, for the purpose of enabling plaintiff's counsel to ascertain which, if any, of the shareholders contained in such list were also shareholders of record of J. I. Case Company on October 16, 1956.

5. That the time for any defendant to answer or make a motion directed toward the amended and supplemental complaint be and the same is hereby extended to 20 days after the receipt of notice of the filing of security as pro- [fol. 538] vided in Item 1, or to 20 days after the service of an amended complaint as provided in Item 3, if a motion for leave to file such amended complaint be granted.

Dated, Milwaukee, Wisconsin, this 23rd day of October, 1958.

Robert E. Tehan, U. S. District Judge.

[fol. 554] [Filé endorsement omitted]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
No. 56-C-247

CARL H. BORAK, Plaintiff,

vs.

J. I. CASE COMPANY, a Wisconsin corporation, et al., Defendants.

OPINION—September 17, 1959

On April 7, 1958, the defendants filed a motion in this action for an order requiring the plaintiff to give security for expenses pursuant to the provisions of §180.405(4), Wisconsin Statutes. The court entered its order on October 23, 1958 directing the plaintiff to furnish security on or before December 12, 1958, in the amount of $75,000 for reasonable expenses incurred by the defendant, J. I. Case Company, or for which said defendant would become liable. The order further provided that if the plaintiff failed to furnish security as directed, judgment dismissing the action as to all defendants would be entered with costs. The order further expressly provided,

> "That nothing herein contained shall be construed so as to prevent the plaintiff from seeking leave to file an amendment to his amended and supplemental complaint joining as additional parties plaintiff the holder or holders of at least 3% of the common stock of J. I. Case Company prior to December 12, 1958."

The plaintiff has filed a motion for rehearing asking the court to vacate the order of October 23, 1958, and to stay dismissal of this action until twenty days after the ruling on the motion for rehearing. The plaintiff further asks that, should the motion for rehearing be denied, the dis-

missal order be conditioned on payment by defendants to plaintiff of the costs and expenses incurred by him.

[fol. 555] The defendant, J. I. Case Company, has filed a motion for judgment dismissing this action because of failure by the plaintiff to comply with the order of October 23, 1958.

The plaintiff contends that defendants' motion for security for costs should be denied because (1) defendants are precluded from asserting their rights under §180.405 (4), Wisconsin Statutes, by reason of waiver and laches, (2) the amended complaint sets forth a representative cause of action to which the security for costs statute is inapplicable, and, (3) §180.405(4), Wisconsin Statutes, under which defendants claim the right to security violates the United States Constitution.

We have carefully examined the record in this case and find no merit to the plaintiff's contention that the defendants have waived their right to security or are guilty of laches with respect to asserting the right.

Plaintiff's original complaint, in which he asked the court to declare that the then proposed plan of merger between J. I. Case Company and American Tractor Corporation was illegal and void and sought to enjoin the defendants therein named from taking action to consummate said plan, was filed on November 13, 1956. On November 15, 1956, the court denied the plaintiff's motion for a temporary injunction.

Shortly thereafter, this court held the first of many pre-trial conferences calculated to expedite the discovery procedure and shape the issues for trial. It was the position of the plaintiff that extensive discovery proceedings were necessary before he could file his amended complaint. The court sustained plaintiff in this respect over the objection of the defendants, and agreed to monitor the discovery proceedings. The court was called on very frequently to rule on motions for the production of a vast [fol. 556] amount of documents. After some months of inspection and study of these documents, the taking of depositions began. According to plaintiff's counsel on supporting affidavit, a total of 3730 pages of depositions were taken of some 34 witnesses in Milwaukee, Chicago, Racine,

and New York, between June 11, 1957 and February 27, 1958.

Thereafter, it appears that counsel for plaintiff drafted his amended complaint, which was filed on April 1, 1958. Within six days thereafter, the defendants filed their motion for security for costs. Under these circumstances, we must find that the defendants were not only not guilty of laches, but were most vigilant and alert in asserting their defenses.

It is difficult to accept plaintiff's contention in this respect. He himself was given an extremely generous amount of time to complete his pre-pleading discovery, and then time to file his amended complaint. We know of no method by which an adversary can intelligently address a motion to a pleading before it is in existence.

Plaintiff's second ground of his motion is that he and the other common stockholders of J. I. Case Company have preemptive rights with respect to the shares issued for the acquisition of American Tractor Corporation. We find nothing in the briefs filed subsequent to the rendition of our oral opinion to cause us to change the views we expressed therein, and we therefore adhere to it.

At the hearing on the defendants' motion for security, and in his briefs filed in opposition to said motion, the plaintiff raised no question concerning the constitutionality of §180.405(4), Wisconsin Statutes, but he now asserts that that section contravenes the Due Process and Equal Protection Clauses of the United States Constitution. This [fol. 557] same contention was considered by the United States Supreme Court in *Cohen* v. *Beneficial Industrial Loan Corp., et al.* (1949) 337 U. S. 541, in which case the Supreme Court held that a similar statute in effect in the State of New Jersey was constitutional. The plaintiff attempts to distinguish the *Cohen* case because the New Jersey statute there upheld required a shareholder to own 5% of the stock *or* stock having a market value of $50,000, while the Wisconsin Statute requires a shareholder to own 3% of the stock regardless of its market value. We do not believe that his variance between the New Jersey and Wisconsin Statutes is significant on the question of constitutionality. The Supreme Court's opinion in the *Cohen*

case makes clear that Court's belief that a state has plenary power to impose standards of responsibility and accountability upon stockholders seeking to represent the interests of fellow stockholders in court actions as conditions precedent to placing the state's litigating and adjudicating processes at their disposal. Nor is there any indication in the opinion that a state is restricted to imposing a monetary standard only. On the contrary, the opinion at Pages 552-553 states:

> "We do not think the state is forbidden to use the amount of one's financial interest, which measures his individual injury from the misconduct to be redressed, as some measure of the good faith and responsibility of one who seeks at his own election to act as custodian of the interests of all stockholders, and as an indication he volunteers for the large burdens of the litigation from a real sense of grievance and is not putting forward a claim to capitalize personally on its harassment value. These may not be the best ways of precluding 'strike lawsuits,' but we are unable to say that a classification for these purposes, based upon the percentage or market value of the stock alleged to be injured by the wrongs, is an unconstitutional one. Where any classification is based on a percentage or an amount, it is necessarily somewhat arbitrary."

The plaintiff's motion for rehearing asking the court to vacate its order of October 23, 1958, to stay dismissal of this action until 20 days after the ruling on this motion, and to condition the dismissal order on payment by the [fol. 558] defendants to the plaintiff of his costs and expenses is in all respects denied in accordance with this opinion, and the motion of the defendant, J. I. Case Company, for judgment dismissing this action as to all defendants is granted.

Dated, Milwaukee, Wisconsin, this 17th day of September, 1959.

Robert E. Tehan, U. S. District Judge.

[fol. 559] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

No. 56-C-247

[Title omitted]

ORDER DENYING PLAINTIFF'S MOTION FOR REHEARING AND GRANTING DEFENDANTS' MOTION FOR JUDGMENT DISMISSING THE ACTION—September 17, 1959

This court on October 23, 1958 having granted the defendants' motion to require security for costs pursuant to §180.405(4), Wisconsin Statutes, and having ordered that the plaintiff furnish the defendants with such security for reasonable expenses in the amount of $75,000 on or before December 12, 1958, and that, if the plaintiff failed to furnish such security within the time provided, judgment dismissing the action as to all defendants would be entered with costs, and the plaintiff having filed its motion for rehearing on December 2, 1958, asking that the court (1) vacate its order of October 23, 1958, (2) stay dismissal of this action until 20 days after the ruling on this motion, and (3) if this motion is denied, condition its dismissal order upon payment by the defendants to the plaintiff of his costs and expenses, and the defendant, J. I. Case Company, having moved on December 16, 1958, for judgment dismissing this action as to all defendants with costs, and the court having considered the briefs and affidavits filed in connection with said motions, and having this day filed its opinion,

[fol. 560] Now, Therefore, It Is Ordered:

1. That the motion of the plaintiff filed on December 2, 1958, be and the same is hereby in all respects denied.

2. The motion of the defendant, J. I. Case Company, be and the same is hereby granted and the action is dismissed.

Dated, Milwaukee, Wisconsin, this 17th day of September, 1959.

Robert E. Tehan, U. S. District Judge.

[fol. 606]

IN UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

No. 56-C-247

CARL H. BORAK, Plaintiff,

vs.

J. I. CASE COMPANY, a Wisconsin corporation, et al., Defendants.

ORDER VACATING ORDER OF DISMISSAL, ETC.—March 10, 1960

The plaintiff having filed a notice of appeal on October 16, 1959, from orders of the court granting the defendants' motion to require security for costs, denying the plaintiff's motion for a rehearing and granting the defendant, J. I. Case Company's motion to dismiss this action as to all defendants, and the plaintiff having subsequently moved to dismiss his appeal, which motion was granted, and having moved (1) for leave to file a second amended and supplemental complaint; (2) to dismiss Lillian Rojtman, Ellen B. Elliott, Herbert H. Bloom, Allen Northey Jones, C. J. Reese, C. W. Johnson, Earl Ginn, Wesley Todd, H. W. Vandeven, John W. Mulford, Joan M. Dixon, Elliott & Company, a partnership, John B. Elliott, Mary E. Elliott, Edward A. Walsh, Edna Walsh, Richard Pistell, Janet Pistell, Gilligan Will & Company, a partnership, James Gilligan, William Will, Louis W. Alter, Veronica Gilligan, R. Howe, L. E. Howard and E. Kalik as defendants; and (3) to vacate the order of dismissal entered September 17, 1959, or modify said order by permitting the filing of the second amended and supplemental complaint, and briefs having been filed by the plaintiff and by the defendant, J. I. Case Company in connection with said motion, and a hearing on said motion having been held, and the court having considered the briefs filed and the arguments of counsel, and being fully advised,

[fol. 607] Now, Therefore, It Is Ordered:

1. That the order of dismissal entered September 17, 1959, be and the same is hereby vacated and set aside.

2. That the plaintiff is hereby granted leave to dismiss Lillian Rojtman, Ellen B. Elliott, Herbert H. Bloom, Allen Northey Jones, C. J. Reese, C. W. Johnson, Earl Ginn, Wesley Todd, H. W. Vandeven, John W. Mulford, Joan M. Dixon, Elliott & Company, a partnership, John B. Elliott, Mary E. Elliott, Edward A. Walsh, Edna Walsh, Richard Pistell, Janet Pistell, Gilligan Will & Company, a partnership, James Gilligan, William Will, Louis W. Alter, Veronica Gilligan, R. Howe, L. E. Howard and E. Kalik, as defendants.

3. That the plaintiff be and he is hereby granted leave to file a second amended and supplemental complaint.

Dated, Milwaukee, Wisconsin, this 10th day of March, 1960.

Robert E. Tehan, U. S. District Judge.

[fol. 623] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

No. 56 C 247

[Title omitted]

ORDER DISMISSING CERTAIN DEFENDANTS—Filed June 20, 1960

This Matter Coming on to Be Heard on the motion of plaintiff, and leave of Court having been previously granted,

It Is Hereby Ordered that the following persons be and they are hereby dismissed as defendants in this action:

Lillian Rojtman, Ellen B. Elliott, Herbert H. Bloom, Allen Northey Jones, C. J. Reese, C. W. Johnson, Earl

Ginn, Wesley Todd, H. W. Vandeven, John W. Mulford, Joan M. Dixon, Elliott & Company, a partnership, John B. Elliott, Mary E. Elliott, Edward A. Walsh, Edna Walsh, Richard Pistell, Janet Pistell, Gilligan Will & Company, a partnership, James Gilligan, William Will, Louis W. Alter, Veronica Gilligan, R. Howe, L. E. Howard and E. Kalik.

Dated:

Enter:

Robert E. Tehan, U. S. District Judge.

[fol. 625]

IN UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

No. 56 C 247

[Title omitted]

SECOND AMENDED AND SUPPLEMENTAL COMPLAINT—
Filed July 1, 1960

(Dated June 29, 1960)

Carl H. Borak, plaintiff, by his attorneys, Bruno V. Bitker, Alex Elson and Arnold I. Shure, alleges upon information and belief, except as to paragraphs 1 and 2 which are alleged on personal knowledge, as follows:

1. Plaintiff Carl H. Borak, at all times herein mentioned, was and now is a resident and citizen of the State of Illinois. He is, and at the time of the matters complained of herein was, the registered and beneficial owner of 2000 shares of common stock of J. I. Case Company, ("Case"). Five Hundred shares were purchased in 1952 which became 1000 shares in a subsequent 2 for 1 stock split and 1000 shares in 1955.

[fol. 626] 2. Plaintiff brings this action in a representative capacity on behalf of himself and all other holders of common stock immediately prior to the merger hereafter

described, and their successors in interest, excluding all holders of common stock who were directors of Case just prior to the merger and such holders of common stock who were apprised of the acts and wrongdoing hereafter described, the total holdings of which shareholders are in excess of 200,000 shares. The shareholders whom plaintiff represents constitute a class in excess of 4,000 persons and are so numerous it is impractical for all to join as plaintiffs. Plaintiff is well able to represent such common stockholders fairly and effectively.

3. Defendant Case, a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, is a resident of and doing business in that state and has its principal office in that state.

4. The other defendants and their states of residence are as follows:

	Director From	To	Other position Held with Case	Citizen Of
L. R. Clausen	1924	-	Consultant and former President	Wisconsin
John T. Brown	1947	-	Chairman of Board of Directors and formerly President	Wisconsin
H. G. Barr	1952	-	Vice President	Wisconsin
William J. Grede	1953	-	Chairman of Executive Committee, President since 1960	Wisconsin
William B. Peters	1955	-	Vice President and Treas.	Wisconsin
Marc B. Rojtman	1957	- 1960	Formerly President, Executive Vice President and General Manager	Wisconsin
A. O. Choate	1914	- 1957		New York
William Ewing	1920	-		New York
H. S. Sturgis	1927	-		New York
E. P. Hamilton	1953	-		Wisconsin
Mentor Kraus	1957	-		Indiana
Nathaniel C. Beeber	—			New York

[fol. 627] Edward L. Elliott was a director of Case from 1957 until 1959. He died on or about October 15, 1959. By leave of Court, the executor of his estate, John B. Elliott, was substituted as defendant for him. John B. Elliott is a citizen of New Jersey.

A majority of the directors of Case are named as defendants. All defendants who are now Case directors are sued individually and in their capacities as such directors.

Marc B. Rojtman ("Rojtman") is sued individually and as representative of all ATC shareholders who received Case common and second preferred stock in consequence of the Case-ATC merger. Such shareholders constitute a class so numerous as to make it impracticable to bring them all before the Court. All such shareholders are made parties as a class for the purpose of securing certain relief herein requested against this class. The interests of all members of such class are fairly and adequately represented by Rojtman. Nathaniel C. Beeber is sued individually and as a representative of all holders of common stock purchase warrants issued by ATC to the purchasers of its preferred stock, Series 56-1. Such holders constitute a class so numerous it is impracticable to bring them all before the Court. All such holders are made a class for the purpose of securing certain relief herein requested against this class. The interests of all members of the class are fairly and adequately represented by Beeber. All defendants are citizens and residents of states other than Illinois.

5. Jurisdiction is conferred on this court by: (1) Section 1332 of the Judicial Code (28 U.S.C. § 1332) in that there is diversity of citizenship between the plaintiff and all defendants and in that the sum or value in controversy, exclusive of interests and costs, exceeds $10,000; (2) Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. § 78 aa); (3) Section 1331 of the Judicial Code (28 U.S.C. § 1331) in that the matter in controversy exceeds the sum or value of $10,000 and arises under the laws of the United [fol. 628] States; and (4) Section 1337 of the Judicial Code (28 U.S.C. § 1337) in that the action arises under an Act of Congress regulating commerce.

6. This action is not a collusive one instituted for the purpose of conferring upon a court of the United States

jurisdiction of a cause of action over which it would not otherwise have cognizance.

7. Under the common law of Wisconsin shareholders of Wisconsin corporations have preemptive rights—that is the right to subscribe proportionately to all new or additional issues of corporate securities.

Section 180.21 of the Wisconsin Business Corporation Law provides: "Any preemptive right of a shareholder may be limited or denied to the extent provided in the articles of incorporation."

The Case Articles of Association as amended, contain no provisions regarding denial or limitation of preemptive rights except with regard to a purported attempt to deny the rights in stock set aside under the stock option plan.

Defendants have recognized the existence of the right in relation to stock issued pursuant to stock options (page 20 of the Proxy Statement hereafter described), with respect to all stock issued for cash (Proxy Statement, pp. 18, 19) and with respect to the issuance of $20,130,400 subordinated debentures on October 15, 1958 (Prospectus, dated October 15, 1958, pages 1, 3 and 20).

8. Plaintiff brings this action to enforce the preemptive rights of himself and other holders of common stock similarly situated to him with respect to certain shares of common and second preferred stock (hereafter described) which [fol. 629] were issued pursuant to a purported statutory merger between Case and ATC, formerly a New York corporation. Plaintiff seeks also to enforce preemptive rights with respect to any shares issued for cash pursuant to ATC stock warrants convertible into Case common and second preferred stock and pursuant to a stock option plan, amendments to which were purportedly adopted by Case. Both the merger plan and stock option amendments purportedly were approved by the shareholders of Case at a special meeting held on November 15, 1956. The merger plan, which required the favorable vote of two-thirds of the outstanding common and preferred stock, each voting separately as a class, was declared approved by a close margin. On January 10, 1957, Case and ATC purportedly completed action required under the laws of Wisconsin and New York to consummate the merger. Both the merger and stock

option proposal were formally announced to the shareholders about October 15, 1956 by means of a Proxy Statement which included a letter dated October 15, 1956, from J. T. Brown, President and Chairman of the Board of Directors of Case, a notice of the November 15, 1956 special meeting of stockholders and a proxy statement describing the plan. Also included were the plan of merger, articles of merger and certificate of consolidation. The proxy statement is attached to the original complaint as Exhibit A, and is incorporated herein by reference.

9. Under the terms of the merger and stock option plan 648,852 shares of common stock (including 195,000 shares issuable for cash) and 1,197,704 shares of second preferred stock (including 90,000 shares issuable for cash) were issued or set aside without granting plaintiff and other common shareholders similarly situated to him their preemptive rights to subscribe to said shares.

[fol. 630] Said merger and stock option plans and the consummation thereof were effectuated by a series of illegal and fraudulent acts hereafter described and in consequence thereof the plaintiff and other shareholders similarly situated to him were deprived of their preemptive rights in the shares of common and second preferred stock issued pursuant to the merger and stock option plans.

10. In May, 1954, Edward L. Elliott (hereafter "Elliott") negotiated for ATC a loan of $250,000 from a New York bank and at the same time formed and headed a syndicate which lent ATC $250,000. As part of the transaction, Elliott and Company (Elliott's stock brokerage firm) acquired 20,000 shares of ATC common at 51¢ a share and the syndicate 150,000 shares at the same price.

Elliott devised a plan for ATC to avoid registration of the securities under Section 5 of the Securities Act of 1933, 15 U.S.C. § 77e, and the issuance of a formal prospectus. Such a prospectus would have revealed ATC's weak condition and impeded the stock promotion plan. Elliott avoided SEC registration through unlawful recourse to the private offering exemption of Section 4 (1) of the Securities Act of 1933, 15 U.S.C. § 77(d).

At or about the same time ATC made a public offering through Elliott and Company of 24,000 shares of ATC

common stock at $4.125 a share and on August 31, 1954, filed under Regulation A of the Securities Act of 1933 an offering circular which was false, misleading and fraudulent in several material respects. Elliott and Company moreover in violation of regulations of the Securities Act of 1933, sold to the public all of the 24,000 shares prior to the filing or approval of the offering circular.

[fol. 631] Over the counter trading began about July 1954 and on January 17, 1955 ATC common was listed on the American Stock Exchange.

From 1954 until the merger with Case, approximately 80% of the total outstanding stock of ATC was closely held by Rojtman, Elliott and their associates.

Commencing in June 1954 and continuing until the merger of ATC with Case, Elliott conducted a concerted campaign of bringing ATC to the attention of stock brokers, analysts, security investment advisers and anyone else who might help promote ATC stock.

The total outstanding stock in the hands of the public was small. Total trading in ATC was relatively light with the price often changing widely on narrow trading.

11. Beginning in July, 1954 the market price of ATC common enjoyed a spectacular rise. On August 18, 1955 the stock was split 2 for 1. The stock price ranges from the third quarter of 1954 to the third quarter of 1956 were:

	Before Split		*After Split and Adjusted for Split*	
	High	*Low*	*High*	*Low*
3rd Quarter 1954	5¾*	3**	2⅞*	1½**
4th Quarter 1954	12¾*	7**	6⅜*	3½**
1st Quarter 1955	19¼	12	9⅝	6
2nd Quarter 1955	30	19	15	9½
3rd Quarter 1955			14⅝	12¾
4th Quarter 1955			17⅞	13
1st Quarter 1956			16¼	13⅜
2nd Quarter 1956			14¾	13½
3rd Quarter 1956			15	12⅛

* High offer over-the-counter

** Low bid over-the-counter

[fol. 632] 12. The foregoing rise in price was attained notwithstanding that:

a) At all times 80% or more of the common stock was closely held by Rojtman, Elliott and their associates.

b) At all times ATC was in a precarious financial condition.

c) ATC never paid a dividend on its common stock and in fact could not pay a dividend under the terms of its first mortgage.

d) ATC book value was about $1.15.

e) Prior to 1952 and for the years 1948-1951 inclusive, ATC had an earned surplus of only $49,542.

f) ATC had net losses of $39,908 in 1952, $88,814 in the eight months ended August 31, 1953 and $166,871 in the fiscal year ended August 31, 1954, and net profits of $246,782 in fiscal 1955 and $306,211 in the eleven months ending July 31, 1956. Thus, in its best year, (fiscal 1955) earnings were about 32 cents per share.

13. On July 2, 1959 one John A. Latimer was indicted in the United States District Court for the Southern District of New York (Case No. CR 159-188) for manipulating alone and with other persons ATC stock during the period from May, 1955 through February, 1956.

On March 30, 1960 the United States District Court for the Southern District of New York in Case No. CR. 159-188, entitled United States of America v. John A. Latimer, entered the following judgment, the relevant portion of which reads as follows:

> [fol. 633] "It Is Adjudged that the defendant has been convicted upon his plea of guilty of the offense of unlawfully effecting transactions on the American Stock Exchange in the common stock of American Tractor Company. (Title 15, Sections. 78(i)(a)(1), 78(i)(a)(2) and 78ff(a), U.S.C.) as charged in fifty-one counts and the court having asked the defendant whether he has anything to say why judgment should not be pro-

nounced, and no sufficient cause to the contrary being shown or appearing to the court, It Is Adjudged that the defendant is guilty as charged and convicted."

Elliott admitted during the course of his deposition by plaintiff that he knew prior to the merger that Latimer had engaged in manipulative activity in ATC stock.

14. In approving the merger the defendant Case directors violated the Wisconsin Business Corporation Law and breached their fiduciary duties to the plaintiff and other shareholders similarly situated in the following particulars:

(a) The Wisconsin Business Corporation Law provides as follows:

Section 180-14(1):

"Shares having a par value may be issued for such consideration, not less than the par value thereof, as shall be fixed from time to time by the Board of Directors."

Section 180-15(1):

"The consideration for the issuance of shares may be paid, in whole or in part, in money, in other property, tangible or intangible, or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued shall have been received by the corporation such shares shall be deemed to be fully paid, and non-assessable by the corporation."

Section 180-15(3):

"In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive."

[fol. 634] (b) The directors violated Sec. 180-15(1) in that they included the future earnings of ATC and the future services of Rojtman and other ATC officials as part

of the consideration paid by ATC for the issuance of Case shares. Such future earnings and future services are neither valid consideration nor a proper element of value.

(c) In fixing the consideration for the shares of stock to be issued by Case to ATC for the assets of ATC, the Board of Directors of Case violated Section 180-14(1) in that the consideration fixed was less than the par value of such securities.

The directors of Case fixed what they describe as "the minimum fair value of the net assets of ATC to be acquired in the merger" at $14,757,068. (Proxy Statement, page 40.) The par value of the Case securities issued was $14,677,078, determined as follows:

1,107,704 shares of 6½% Second Cumulative Preferred Stock, $7 par value	$ 7,753,928
553,852 shares of Common Stock, $12.50 par value	6,923,150
	$14,677,078

As part of the merger agreement Case agreed additionally to redeem the preferred stock of ATC at a cost to Case of $2,362,500. Of this sum $1,050,000 was received by Case in redemption of the ATC preferred purchased by it on September 24, 1956 but $1,312,500 was paid to third parties and hence this sum must be deducted from the $14,757,068 found to be the minimum fair value of ATC assets. Hence the consideration received for the shares is $13,444,568 which is $1,232,510 less than par value.

[fol. 635] (d) In fixing the consideration paid for the shares of Case stock issued to ATC stockholders upon consummation of the merger the directors further violated the requirements of Section 180-14(1) by making a determination of the "minimum fair value" of the assets received from ATC. The directors were under a clear statutory duty to fix the consideration at a specific amount.

(e) The directors of Case did not in fact make the valuation required by Sec. 180-14(1) for the reason that the purported valuation placed on the assets of ATC represented merely a mechanical computation determined to

equal the par value of the stocks which by the terms of the merger agreement Case was obligated to issue to the shareholders of ATC.

(f) The price paid for ATC was excessive in relation to ATC earnings: the purchase price exceeding $17,000,000 was more than fifty times the earnings for the company's best year, a grossly excessive ratio. On the basis of average earnings of ATC from 1952 to 1956 the purchase price was about 218 times earnings.

(g) In respect to earnings ATC was grossly overvalued and Case grossly undervalued: Case exchanged for each share of ATC stock—average earnings about 7¢, one-half share of Case common (average earnings 40½¢ plus 1 share $7.00, 6½% second preferred, dividend 45½¢ a total of $.86). An exchange on this basis was grossly unfair to and a fraud upon the Case common shareholders.

(h) In respect of book value, ATC was grossly overvalued and Case grossly undervalued. The book value of [fol. 636] ATC common stock only was about $1.15 per share in contrast with a book value of $36 per share for the common stock of Case. Not considering the inflated value placed on ATC assets, ATC shareholders received about $20.26 in book value for each of their shares (one-half share Case common, book value after the merger $13.26 plus one share Case second preferred, par $7). In total, ATC shareholders received Case common stock having a book value of about $14,685,799 plus preferred stock paying 6½% dividends, and having a par value of $7,753,928 or a total of about $22,400,000 in exchange for shares which had a book value of $1,275,653. The book value exchange ratio which was in excess of 17 to 1 was grossly unfair to and a fraud upon the Case common shareholders.

(i) The directors wrongfully relied on the market price of ATC common as a measure of value of ATC.

(j) In determining value of part of the physical assets of ATC, the Case directors wrongfully relied on an appraisal of said property by a firm hired by ATC prior to the merger. The appraisal inflated the value of such assets by

more than 100%. Moreover, while the proxy statement says the Case directors relied on this appraisal most of them never saw it and some never heard of it.

(k) The Case directors improperly considered as an element of value the projected future earnings of ATC.

(l) The directors of Case failed to consider that even the $17,000,000 price would not represent the full cost of ATC to Case. At the time of the merger, ATC was so critically short of cash that it was scarcely a viable entity, and in fact it was necessary for Case to invest $1,000,000 in ATC before shareholder approval of the merger so that it could survive.

[fol. 637] Thereafter, in October, 1958, it was necessary for Case to borrow $20,130,400 on subordinated 5½% debentures, and in April, 1959, to borrow $25,000,000 on 15 year, 5¾% notes. These loans were necessitated in large part by the ATC merger. The interest charges on these loans, exceeding $2,500,000 per year, constitute a prior claim to earnings ahead of the common stock.

15. The defendant Case directors breached their fiduciary obligations to the Case common shareholders and violated section 14a of the Securities and Exchange Act of 1934 (15 U.S.C. § 78n(a)) and Rule X-14a promulgated thereunder (17 C.F.R. 240.14a), by approving and issuing the Proxy Statement of October 15, 1956 (including Brown's Letter) which contained numerous material omissions, false representations and misleading statements which, among others, include the following:

a) Brown's letter and the Proxy Statement fail to state expressly the total price Case paid for ATC exceeded $17,000,000.

b) The Proxy Statement, moreover, gives the false impression (p. 40) that the price being paid is the "minimum fair value" of the net assets of ATC as fixed by the directors, namely, $14,757,068.

c) The letter and statement fail to state that the book value of Case common was $36.00 per share and ATC common $1.15. The letter states that the net book worth of ATC

adjusted to reflect the subsequent issue of 50,000 shares of ATC preferred to Case was $3,525,653, but fails to state explicitly that prior thereto ATC net book worth was only $2,525,653. The effect of this omission was to inflate the apparent value of ATC and reduce the disparity between the price paid by Case and the book value of the assets to be received.

{fol. 638} (d) The proxy statement which displays prominently on page 7 the comparative market prices of Case and ATC common stocks led the Case shareholders to infer that the proposed terms of merger were fair because in accordance with the comparative market price of the two stocks.

(e) The letter and proxy statement fail to state that the $1,000,000 investment in ATC by Case was necessary to maintain ATC as a going concern until the merger would be consummated, and that after approval of the merger Case would have to invest additional millions of dollars for working capital in order to continue operating ATC.

(f) The prospectus states falsely (page 2) that the Case common "would not be affected" as a result of the merger, whereas in fact the Case common was affected substantially and adversely in the following particulars: The 1,107,704 shares of the new $7.00, 6½% preferred have a prior claim on earnings totaling about $500,000 per year. In addition, there will be charges against earnings averaging about $680,000 per year for approximately 20 years for amortizing the $13,463,000 difference between the price of the ATC assets and their book value. This charge will be borne principally by the former Case common shareholders.

The letter and statement fail to state explicitly that after the $500,000 and $680,000 have been charged to earnings, the Case shareholder group as constituted before the merger must share the remaining earnings with the holders of the 553,852 shares of Case issued to the holders of the ATC common.

(g) The statement that the Case common will not be "adversely affected" is false for the further reason that no statement was made apprising the Case shareholders that

control of the Case Company was being placed in the hands of Rojtman, Elliott and those associated with them.

[fol. 639] The passing of control of Case to these persons was further concealed by a misstatement in the proxy statement that Ellen B. Elliott (Wife of Elliott) held only 5,000 shares of ATC preferred when in fact she also held 90,000 shares of ATC common.

(h) While the letter and proxy statement overstate facts favorable to ATC, they tend to make the position of Case appear worse than it was in actuality. In particular, for ATC the prospectus sets forth the earned surplus account for the years from 1952 to a current date in 1956 (page 32). On page 26, however, similar information is presented with reference to Case for the period from 1953 to 1956. This fact is significant because in 1952 Case experienced a good year in which sales exceeded $153,000,000, net income exceeded $7,000,000 and earnings per share were $2.82, a sum more than double the book value of ATC common. Moreover, on page 26 of the proxy statement the net loss of Case for the nine months ended July 31, 1956 is stated to be $3,703,389. On the basis of this information the reader of the proxy statement would infer that the loss for the 1956 fiscal year would be approximately $5,000,000. In fact, however, the loss for 1956 was $987,000, an amount far less than the loss stated for the nine-month period. Since the letter and the prospectus were dated October 15, 1956, only two weeks short of the close of the 1956 fiscal year, the directors knew or should have known that the nine months' results gave a false picture of fiscal 1956.

(i) The proxy statement fails to state that the recipients of the stock options were the persons who had negotiated the terms of the merger which included the stock options.

(j) The proxy statement fails to reveal that Grede Foundries Inc., which is owned and controlled by William J. Grede, was a supplier of castings to Case and ATC and that it would receive a substantial increase in business as a result of the merger.

[fol. 640] (k) The letter and proxy statement misstate that ATC was a then producer of medium size crawler trac-

tors and that Case would gain an immediate entry into the road-building and heavy construction equipment business if the merger were approved.

(l) The proxy statement misrepresents ATC's current and prospective competitive situation.

(m) The letter and proxy statement misstate that Case and ATC branches, dealers and distributors would be capable of handling the merged line of equipment.

(n) The proxy statement fails to state that the Case common shareholders had preemptive rights to the shares of common and second preferred stock issued pursuant to the merger.

(o) The proxy statement fails to state that the stock market price of ATC common stock was inflated, maintained and manipulated.

16. These omissions, false representations and misleading statements in the letter and proxy statement were material to the merits of the merger proposal. The shareholders of Case relied thereon in voting on the merger. The merger was approved by a close margin. It would not have been approved if the letter and proxy statement had not contained such omissions, false representations and misleading statements.

17. The merger and stock option plans were tainted with self dealing by the "Case Management Group" (Brown, Grede and Clark M. Robertson, the latter being a director and general counsel) and the "ATC management group" (Rojtman, Elliott and Kraus). The Case management group promoted the merger in order to perpetuate themselves in office by shifting voting control of Case to Rojtman, [fol. 641] Elliott and their confederates. Rojtman and Elliott promoted the plan in part in order to obtain a market for their large holdings in ATC, the stock market price of which had been inflated, maintained and manipulated by Rojtman and Elliott and their associates.

In arriving at a basis for exchange of stock on the merger the ATC management group insisted upon giving full effect to the current stock market price of ATC stock. The Case

management group and other Case director defendants did give such effect to and relied upon the stock market price of ATC stock.

The stock market price of ATC was inflated, maintained and manipulated by Rojtman, Elliott and their confederates. The Case management knew and the other Case director defendants knew or in the exercise of ordinary care should have known that the market price of ATC was achieved in this illegal and artificial manner.

Brown, Grede and Rojtman were also guilty of self dealing in securing for themselves valuable stock options as one of the terms of the merger.

Grede, who was the prime mover of the merger for Case also was guilty of self dealing in that at the time of the merger his Company, Grede Foundries, Inc., was supplying castings to Case and ATC and after the merger his company received a substantial increase in business. In the fiscal years ending October 31, 1955 and 1956 Grede's combined sales of castings to Case and ATC were approximately $33,000 and $88,000, respectively; and after the merger, in fiscal 1957, 1958 and 1959, Grede's total sales to Case were approximately $435,000, $674,000 and $475,000, respectively. Neither Grede nor the other defendants having knowledge of these self dealing transactions revealed this information until plaintiff learned of it in the course of taking the deposition of Grede. Thereafter Case has cir- [fol. 642] cumspectly stated this relevant information in its 1958 Debenture prospectus and Annual Proxy Statements to its shareholders.

18. The acts alleged in paragraphs 10-17 inclusive constitute actual or constructive fraud by defendants upon plaintiff and other shareholders similarly situated and such conduct deprived the latter of their preemptive rights.

19. Defendants, by the use of the mails and other instrumentalities of interstate commerce, solicited or permitted the use of their names to solicit proxies by means of the proxy statement dated October 15, 1956 referred to herein, which proxy statement contained materially false and misleading statements and omissions of fact, all as set forth in particular in paragraphs 15-17 hereof, in wilful violation

of Section 14(a) of the Securities and Exchange Act of 1934, 15 U.S.C. § 78 n (a) and Rule X-14a, promulgated thereunder, 17 C.F.R. 240.14a.

By reason of the violations of Section 14(a) of the Securities and Exchange Act of 1934 and Rule X-14a promulgated thereunder, as set forth above, the merger and all contracts made pursuant thereto between the defendants are void under section 29(b) of the Securities and Exchange Act of 1934, 15 U.S.C. § 78 cc (b).

20. If defendants had afforded plaintiff and other shareholders similarly situated to him the right to subscribe to shares issued in the merger on the same basis granted to ATC shareholders, plaintiff and other shareholders similarly situated to him would have been entitled to purchase approximately one-quarter share of Case common and one-half share of second preferred stock for a total subscription price of approximately $2.20 for each share of Case common held by them at the time of the merger.

[fol. 643]. 21. (a) The directors of Case included the future services of Rojtman and other ATC officials as part of the consideration paid by ATC for the issuance of Case shares. In fact, as a pre-condition to the merger the employment of Rojtman was arranged and in consideration thereof he was given an option to purchase 25,000 shares of common stock of Case. (The option period is ten years; the option price the fair market value of the stock on the date the option was granted.) Brown in his letter of October 15, 1956, held out as an inducement to the Case shareholders to approve the merger, the fact that Rojtman would become Executive Vice President and General Manager, a director and a member of the Executive Committee of the Board of Directors immediately after the merger. Subsequently, he became President.

(b) On or about February 1, 1960, Case suddenly announced that Rojtman had resigned as President of Case and that he had resigned as a member of the Board of Directors and Executive Committee. Case further announced that henceforth Rojtman was to be a special adviser to the President and the Case Executive Committee.

He is not to make his headquarters at Racine, the site of Case's principal office, his position is not to be a full time one and he is to be consulted at Case's option. Pursuant to questioning by one of plaintiff's attorneys at the annual meeting of stockholders held on April 21, 1960, Grede revealed for the first time that Rojtman received a three year contract at $40,000.00 a year for such consulting service. In a printed brochure entitled "Statement of President—Annual Meeting of Stockholders—4-21-60", mailed to Case shareholders subsequent to said meeting, Grede does not mention Rojtman's contract for consulting service.

[fol. 644] (c) Grede succeeded Rojtman as President of Case.

22. Plaintiff and other holders of common stock of Case similarly situated to him have been severely and irreparably damaged by the failure to recogize their preemptive rights. They have no adequate remedy at law.

Wherefore, plaintiff prays that this Court:

I. Grant such of the following relief as it deems equitable:

a) Enter judgment in favor of the plaintiff and all other Case shareholders similarly situated and against the Case directors who approved the merger, Rojtman, Elliott and such of the other defendants as the Court finds responsible for the merger and the consequent deprivation of preemptive rights in an amount to be determined by the Court;

b) Enter a decree directing Case to issue to plaintiff and all other Case shareholders similarly situated and their successors in interest, on such terms as the Court may fix, such securities of Case as the Court deems necessary to compensate them for the violation in the merger of their preemptive rights; or

c) Declare and adjudge that the merger and all agreements made pursuant thereto are void under Section 29(b) of the Securities and Exchange Act of 1934 for violation of Section 14(a) of said Act, or in the alternative, enter judgment for damages growing out of violations of the aforesaid provisions of the Act.

[fol. 645] II. Grant such other and further relief, including allowances to plaintiff for his costs, disbursements and counsel fees, as equity shall require.

Alex Elson, Arnold I. Shure and Bruno V. Bitker,
By: Alex Elson.

Alex Elson, Arnold I. Shure, 11 South LaSalle Street, Chicago 3, Illinois; Bruno V. Bitker, 208 East Wisconsin Avenue, Milwaukee, Wisconsin, Attorneys for Plaintiff.

[fol. 646] *Duly sworn to by Carl H. Borak, jurat omitted in printing.*

[fol. 673-a] PREFIX

This action was commenced on November 13, 1956 by the plaintiff, Carl H. Borak, suing on behalf of himself and a large class of shareholders situated similarly to him, against J. I. Case Company, a Wisconsin corporation, and John T. Brown, H. G. Barr, L. R. Clausen, William J. Grede, E. P. Hamilton, and William B. Peters, individually and as directors of the corporation, to enjoin and declare illegal and void a merger between the company and American Tractor Corporation. Plaintiff's motion for a temporary injunction was denied on November 15, 1956. Defendants filed their answer to the complaint on November 26, 1956. From November, 1956 through March, 1958 plaintiff engaged in extensive pretrial discovery which included the taking of voluminous depositions. During this period numerous motions relating thereto were presented to the Court.

On April 1, 1958, plaintiff filed an amended and supplemental complaint and on April 7, 1958 defendants filed a motion for security for expenses under § 180.405(4) of the Wisconsin statutes. A hearing was held on defendants' motion for security on April 28, 1958, after which the Court took the motion under advisement. On October 13, 1958 the Court rendered an oral opinion finding in favor of defendants' motion and on October 23, 1958 en

tered an order directing plaintiff to furnish security for expenses in the amount of $75,000. On September 17, 1959 the Court denied plaintiff's motion of December 2, 1958 for rehearing and dismissed the action. A written opinion accompanied the order.

On October 16, 1959 plaintiff filed a notice of appeal from the orders dated October 23, 1958 and September 17, 1959. On October 21, 1959 plaintiff filed a motion to vacate the order of September 17, 1959 and for leave to file a [fol. 673-b] second amended and supplemental complaint. On November 23, 1959 the Court granted plaintiff's motion to dismiss its appeal and took under advisement plaintiff's motion to file a second amended complaint.

On March 10, 1960 the Court granted plaintiff's motion for leave to file a second amended and supplemental complaint and vacated the order of September 17, 1959 dismissing the action. On March 21, 1960 defendants filed a notice of appeal from the order of March 10, 1960. On May 16, 1960, the mandate of this Court was filed in the district court dismissing defendants' appeal on the motion of plaintiff.

On July 19, 1960 defendant J. I. Case Company renewed its motion for security for expenses. This motion was set for hearing by the Court on January 2, 1962 at which time the Court entered an order directing plaintiff to file an amended complaint separating his cause of action based on diversity of citizenship from his cause of action based on violations of federal law. On January 12, 1962 plaintiff filed a third amended and supplemental complaint. On January 26, 1962 defendant J. I. Case Company renewed its motion for security for expenses.

On September 4, 1962 the Court rendered a written opinion and entered an order directing plaintiff to furnish security for expense in the amount of $75,000 as to count 1 of the third amended and supplemental complaint but permitting plaintiff to file a fourth amended and supplemental complaint alleging only a cause of action for a declaratory judgment under § 14a of the Securities Exchange Act of 1934. On September 7, 1962 plaintiff filed a motion to amend the order of September 4, 1962 so as to permit an interlocutory appeal under § 1292(b)

of the Judicial Code. The order was so amended on October 1, 1962. On October 24, 1962 this Court granted plaintiff's petition for leave to appeal from the order of October 1, 1962.

[fol. 674] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

No. 56 C 247

[Title omitted]

THIRD AMENDED AND SUPPLEMENTAL COMPLAINT—
Filed January 12, 1962

Carl H. Borak, plaintiff, by his attorneys, Bruno V. Bitker, Alex Elson and Arnold L. Shure, alleges upon information and belief, except as to paragraphs 1 and 2 of count I which are alleged on personal knowledge, as follows:

COUNT I

1. Plaintiff Carl H. Borak, at all times herein mentioned, was and now is a resident and citizen of the State of Illinois. He is, and at the time of the matters complained of herein was, the registered and beneficial owner of 2000 shares of common stock of J. I. Case Company, ("Case"). Five Hundred shares were purchased in 1952 which became 1000 shares in a subsequent 2 for 1 stock split and 1000 shares in 1955.

[fol. 675] 2. Plaintiff brings this action in a representative capacity on behalf of himself and all other holders of common stock immediately prior to the merger hereafter described, and their successors in interest, excluding all holders of common stock who were directors of Case just prior to the merger and such holders of common stock who were apprised of the acts and wrongdoing hereafter described, the total holdings of which shareholders are in

excess of 200,000 shares. The shareholders whom plaintiff represents constitute a class in excess of 4,000 persons and are so numerous it is impractical for all to join as plaintiffs. Plaintiff is well able to represent such common stockholders fairly and effectively.

3. Defendant Case, a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, is a resident of and doing business in that state and has its principal office in that state.

4. The other defendants and their states of residence are as follows:

	Director From	To	Other Position Held with Case	Citizen Of
L. R. Clausen	1924	1958	Consultant and former President	Wisconsin
John T. Brown	1947	1962	Formerly Chairman & Vice Chairman of Board of Directors and President	Wisconsin
H. G. Barr	1952	1960	Formerly Vice President	Wisconsin
William J. Grede	1953	1962	Chairman of Executive Committee from 1956-1962 and President from 1960 to 1962	Wisconsin
William B. Peters	1955	1960	Formerly Vice President and Treas.	Wisconsin
Marc B. Rojtman	1957	1960	Formerly President, Executive Vice President and General Manager	Wisconsin
A. O. Choate	1914	1957		New York
William Ewing	1920	1960		New York
H. S. Sturgis	1927	1958		New York
E. P. Hamilton	1953	-		Wisconsin
Mentor Kraus	1957	-		Indiana
Nathaniel C. Beeber	—			New York

[fol. 676] Edward L. Elliott was a director of Case from 1957 until 1959. He died on or about October 15, 1959. By leave of Court, the executor of his estate, John B. Elliott,

was substituted as defendant for him. John B. Elliott is a citizen of New Jersey.

All defendants who are now Case directors are sued individually and in their capacities as such directors.

Marc B. Rojtman ("Rojtman") is sued individually and as representative of all ATC shareholders who received Case common and second preferred stock in consequence of the Case-ATC merger. Such shareholders constitute a class so numerous as to make it impracticable to bring them all before the Court. All such shareholders are made parties as a class for the purpose of securing certain relief herein requested against this class. The interests of all members of such class are fairly and adequately represented by Rojtman. Nathaniel C. Beeber is sued individually and as a representative of all holders of common stock purchase warrants issued by ATC to the purchasers of its preferred stock, Series 56-1. Such holders constitute a class so numerous it is impracticable to bring them all before the Court. All such holders are made a class for the purpose of securing certain relief herein requested against this class. The interests of all members of the class are fairly and adequately represented by Beeber. All defendants are citizens and residents of states other than Illinois.

5. Jurisdiction is confered on this court by Section 1332 of the Judicial Code (28 U.S.C. § 1332) in that there is diversity of citizenship between the plaintiff and all defendants and in that the sum or value in controversy, exclusive of interest and costs, exceeds $10,000.

6. Under the common law of Wisconsin shareholders of Wisconsin corporations have preemptive rights—that is the [fol. 677] right to subscribe proportionately to all new or additional isues of corporate securities.

Section 180.21 of the Wisconsin Business Corporation Law provides: "Any preemptive right of a shareholder may be limited or denied to the extent provided in the articles of incorporation."

The Case Articles of Association as amended, contain no provisions regarding denial or limitation of preemptive

rights except with regard to a purported attempt to deny the rights in stock set aside under the stock option plan.

Defendants have recognized the existence of the right in relation to stock issued pursuant to stock options (page 20 of the Proxy Statement hereafter described), with respect to all stock issued for cash (Proxy Statement, pp. 18, 19) and with respect to the issuance of $20,130,400 subordinated debentures on October 15, 1958 (Prospectus, dated October 15, 1958, pages 1, 3 and 20).

7. Plaintiff brings this action to enforce the preemptive rights of himself and other holders of common stock similarly situated to him with respect to certain shares of common and second preferred stock (hereafter described) which were issued pursuant to a purported statutory merger between Case and ATC, formerly a New York corporation. Plaintiff seeks also to enforce preemptive rights with respect to any shares issued for cash pursuant to ATC stock warrants convertible into Case common and second preferred stock and pursuant to a stock option plan, amendments to which were purportedly adopted by Case. Both the merger plan and stock option amendments purportedly were approved by the shareholders of Case at a special meeting held on November 15, 1956. The merger plan, which required the favorable vote of two-thirds of the outstanding common and preferred stock, each voting separately as a class, was declared approved by a close margin. [fol. 678] On January 10, 1957, Case and ATC purportedly completed action required under the laws of Wisconsin and New York to consummate the merger. Both the merger and stock option proposal were formally announced to the shareholders about October 15, 1956 by means of a Proxy Statement which included a letter dated October 15, 1956, from J. T. Brown, then President and Chairman of the Board of Directors of Case, a notice of the November 15, 1956 special meeting of stockholders and a proxy statement describing the plan. Also included were the plan of merger, articles of merger and certificate of consolidation. The proxy statement is attached to the original complaint as Exhibit A, and is incorporated herein by reference.

8. Under the terms of the merger and stock option plan 648,852 shares of common stock (including 195,000 shares issuable for cash) and 1,197,704 shares of second preferred stock (including 90,000 shares issuable for cash) were issued or set aside without granting plaintiff and other common shareholders similarly situated to him their preemptive rights to subscribe to said shares.

Said merger and stock option plans and the consummation thereof were effectuated by a series of illegal and fraudulent acts hereafter described and in consequence thereof the plaintiff and other shareholders similarly situated to him were deprived of their preemptive rights in the shares of common and second preferred stock issued pursuant to the merger and stock option plans.

9. In May, 1954, Edward L. Elliott (hereafter "Elliott") negotiated for ATC a loan of $250,000 from a New York bank and at the same time formed and headed a syndicate which lent ATC $250,000. As part of the transaction, Elliott and Company (Elliott's stock brokerage firm) acquired 20,000 shares of ATC common at 51¢ a share and the syndicate 150,000 shares at the same price.

[fol. 679] Elliott devised a plan for ATC to avoid registration of the securities under Section 5 of the Securities Act of 1933, 15 U.S.C. § 77e, and the issuance of a formal prospectus. Such a prospectus would have revealed ATC's weak condition and impeded the stock promotion plan. Elliott avoided SEC registration through unlawful recourse to the private offering exemption of Section 4 (1) of the Securities Act of 1933, 15 U.S.C. § 77(d).

At or about the same time ATC made a public offering through Elliott and Company of 24,000 shares of ATC common stock at $4.125 a share and on August 31, 1954, filed under Regulation A of the Securities Act of 1933 an offering circular which was false, misleading and fraudulent in several material respects. Elliott and Company moreover in violation of regulations of the Securities Act of 1933, sold to the public all of the 24,000 shares prior to the filing or approval of the offering circular.

Over the counter trading began about July 1954 and on January 17, 1955 ATC common was listed on the American Stock Exchange.

From 1954 until the merger with Case, approximately 80% of the total outstanding stock of ATC was closely held by Rojtman, Elliott and their associates.

Commencing in June 1954 and continuing until the merger of ATC with Case, Elliott conducted a concerted campaign of bringing ATC to the attention of stock brokers, analysts, security investment advisers and anyone else who might help promote ATC stock.

The total outstanding stock in the hands of the public was small. Total trading in ATC was relatively light with the price often changing widely on narrow trading.

10. Beginning in July, 1954 the market price of ATC common enjoyed a spectacular rise. On August 18, 1955 the [fol. 680] stock was split 2 for 1. The stock price ranges from the third quarter of 1954 to the third quarter of 1956 were:

	Before Split		*After Split and Adjusted for Split*	
	High	*Low*	*High*	*Low*
3rd Quarter 1954	5¾*	3**	2⅞*	1½**
4th Quarter 1954	12¾*	7**	6⅜*	3½**
1st Quarter 1955	19¼	12	9⅝	6
2nd Quarter 1955	30	19	15	9½
3rd Quarter 1955			14⅝	12¾
4th Quarter 1955			17⅞	13
1st Quarter 1956			16¼	13⅜
2nd Quarter 1956			14¾	13½
3rd Quarter 1956			15	12⅛

* High offer over-the-counter
** Low bid over-the-counter

11. The foregoing rise in price was attained notwithstanding that:

a) At all times 80% or more of the common stock was closely held by Rojtman, Elliott and their associates.

b) At all times ATC was in a precarious financial condition.

c) ATC never paid a dividend on its common stock and in fact could not pay a dividend under the terms of its first mortgage.

d) ATC book value was about $1.15.

e) Prior to 1952 and for the years 1948-1951 inclusive, ATC had an earned surplus of only $49,542.

f) ATC had net losses of $39,908 in 1952, $88,814 in the eight months ended August 31, 1953 and $166,871 in the fiscal year ended August 31, 1954, and net profits of $246,782 in fiscal 1955 and $306,211 in the eleven months ending July 31, 1956. Thus, in its best year, (fiscal 1955) earnings were about 32 cents per share.

12. On July 2, 1959 one John A. Latimer was indicted in the United States District Court for the Southern District [fol. 681] of New York (Case No. CR. 159-188) for manipulating alone and with other persons ATC stock during the period from May, 1955 through February, 1956.

On March 30, 1960 the United States District Court for the Southern District of New York in Case No. CR. 159-188, entitled United States of America v. John A. Latimer, entered the following judgment, the relevant portion of which reads as follows:

"It Is Adjudged that the defendant has been convicted upon his plea of guilty of the offense of unlawfully effecting transactions on the American Stock Exchange in the common stock of American Tractor Company. (Title 15, Sections 78 (i)(a)(1), 78 (i)(a)(2) and 78ff(a), U.S.C.) as charged in fifty-one counts and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the court, It Is Adjudged that the defendant is guilty as charged and convicted."

Elliott admitted during the course of his deposition by plaintiff that he knew prior to the merger that Latimer had engaged in manipulative activity in ATC stock.

In its preliminary report and investigation of the American Stock Exchange, filed January 5, 1962, the Securities & Exchange Commission noted that Gilligan, Will & Company was the specialist on the American Stock Exchange for ATC common stock; that it acquired such stock prior to the listing of ATC on the exchange and otherwise engaged in various improper and illegal activities while specialist with respect to said stock. Elliott was a close friend and associate of members of Gilligan, Will & Company.

13. In approving the merger the defendants who were then Case directors violated the Wisconsin Business Cor- [fol. 682] poration Law and breached their fiduciary duties to the plaintiff and other shareholders similarly situated in the following particulars:

(a) The Wisconsin Business Corporation Law provides as follows:

Section 180-14(1):

"Shares having a par value may be issued for such consideration, not less than the par value thereof, as shall be fixed from time to time by the Board of Directors."

Section 180-15(1):

"The consideration for the issuance of shares may be paid, in whole or in part, in money, in other property, tangible or intangible, or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued shall have been received by the corporation such shares shall be deemed to be fully paid, and nonassessable by the corporation."

Section 180-15(3):

"In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive."

(b) The directors violated Sec. 180-15(1) in that they included the future earnings of ATC and the future services of Rojtman and other ATC officials as part of the consideration paid by ATC for the issuance of Case shares. Such future earnings and future services are neither valid consideration nor a proper element of value.

(c) In fixing the consideration for the shares of stock to be issued by Case to ATC for the assets of ATC, the Board of Directors of Case violated Section 180-14(1) in that the consideration fixed was less than the par value of such securities.

The directors of Case fixed what they describe as "the minimum fair value of the net assets of ATC to be acquired in the merger" at $14,757,068. (Proxy Statement, page 40.) [fol. 683] The par value of the Case securities issued was $14,677,078, determined as follows:

1,107,704 shares of 6½% Second Cumulative Preferred Stock, $7 par value	$7,753,928
553,852 shares of Common Stock, $12.50 par value	6,923,150
	$14,677,078

As part of the merger agreement Case agreed additionally to redeem the preferred stock of ATC at a cost to Case of $2,362,500. Of this sum $1,050,000 was received by Case in redemption of the ATC preferred purchased by it on September 24, 1956 but $1,312,500 was paid to third parties and hence this sum must be deducted from the $14,757,068 found to be the minimum fair value of ATC assets. Hence the consideration received for the shares is $13,444,568 which is $1,232,510 less than par value.

(d) In fixing the consideration paid for the shares of Case stock issued to ATC stockholders upon consummation of the merger the directors further violated the requirements of Section 180-14(1) by making a determination of the "minimum fair value" of the assets received from ATC. The directors were under a clear statutory duty to fix the consideration at a specific amount.

(e) The directors of Case did not in fact make the valuation required by Sec. 180-14(1) for the reason that the purported valuation placed on the assets of ATC represented merely a mechanical computation determined to equal the par value of the stocks which by the terms of the merger agreement Case was obligated to issue to the shareholders of ATC.

(f) The price paid for ATC was excessive in relation to ATC earnings; the purchase price exceeding $17,000,000 was more than fifty times the earnings for the company's best year, a grossly excessive ratio. On the basis of average [fol. 684] earnings of ATC from 1952 to 1956 the purchase price was about 218 times earnings.

(g) In respect to earnings ATC was grossly overvalued and Case grossly undervalued: Case exchanged for each share of ATC stock—average earnings about 7¢, one-half share of Case common (average earnings 40½¢ plus 1 share $7.00, 6½% second preferred, dividend 45½¢ a total of $.86). An exchange on this basis was grossly unfair to and a fraud upon the Case common shareholders.

(h) In respect of book value, ATC was grossly overvalued and Case grossly undervalued. The book value of ATC common stock was only about $1.15 per share in contrast with a book value of $36 per share for the common stock of Case. Not considering the inflated value placed on ATC assets, ATC shareholders received about $20.26 in book value for each of their shares (one-half share Case common, book value after the merger $13.26 plus one share Case second preferred, par $7). In total, ATC shareholders received Case common stock having a book value of about $14,685,799 plus preferred stock paying 6½% dividends, and having a par value of $7,753,928 or a total of about $22,400,000 in exchange for shares which had a book value of $1,275,653. The book value exchange ratio which was in excess of 17 to 1 was grossly unfair to and a fraud upon the Case common shareholders.

(i) The directors wrongfully relied on the market price of ATC common as a measure of value of ATC.

(j) In determining value of part of the physical assets of ATC, the Case directors wrongfully relied on an appraisal of said property by a firm hired by ATC prior to the merger. The appraisal inflated the value of such assets by more than 100%. Moreover, while the proxy statement says the Case directors relied on this appraisal most of them never saw it and some never heard of it.

[fol. 685] (k) The Case directors improperly considered as an element of value the projected future earnings of ATC.

(l) The directors of Case failed to consider that even the $17,000,000 price would not represent the full cost of ATC to Case. At the time of the merger, ATC was so critically short of cash that it was scarcely a viable entity, and in fact it was necessary for Case to invest $1,000,000 in ATC before shareholder approval of the merger so that it could survive.

Thereafter, in October, 1958, it was necessary for Case to borrow $20,130,400 on subordinated 5½% debentures, and in April, 1959, to borrow $25,000,000 on 15 year, 5¾% notes. These loans were necessitated in large part by the ATC merger. The interest charges on these loans, exceeding $2,500,000 per year, constitute a prior claim to earnings ahead of the common stock.

14. The defendant Case directors breached their fiduciary obligations to the Case common shareholders by approving and issuing the Proxy Statement of October 15, 1956 (including Brown's Letter) which contained numerous material omissions, false representations and misleading statements which, among others, include the following:

a) Brown's letter and the Proxy Statement fail to state expressly the total price Case paid for ATC exceeded $17,000,000.

b) The Proxy Statement, moreover, gives the false impression (p. 40) that the price being paid is the "minimum fair value" of the net assets of ATC as fixed by the directors, namely, $14,757,068.

c) The letter and statement fail to state that the book value of Case common was $36.00 per share and ATC common $1.15. The letter states that the net book worth of ATC adjusted to reflect the subsequent issue of 50,000 shares of ATC preferred to Case was $3,525,653, but fails [fol. 686] to state explicitly that prior thereto ATC net book worth was only $2,525,653. The effect of this omission was to inflate the apparent value of ATC and reduce the disparity between the price paid by Case and the book value of the assets to be received.

(d) The proxy statement which displays prominently on page 7 the comparative market prices of Case and ATC common stocks led the Case shareholders to infer that the proposed terms of merger were fair because in accordance with the comparative market price of the two stocks.

(e) The letter and proxy statement fail to state that the $1,000,000 investment in ATC by Case was necessary to maintain ATC as a going concern until the merger would be consummated, and that after approval of the merger Case would have to invest additional millions of dollars for working capital in order to continue operating ATC.

(f) The prospectus states falsely (page 2) that the Case common "would not be affected" as a result of the merger, whereas in fact the Case common was affected substantially and adversely in the following particulars: The 1,107,704 shares of the new $7.00, 6½% preferred have a prior claim on earnings totaling about $500,000 per year. In addition, there will be charges against earnings averaging about $680,000 per year for approximately 20 years for amortizing the $13,463,000 difference between the price of the ATC assets and their book value. This charge will be borne principally by the former Case common shareholders.

The letter and statement fail to state explicitly that after the $500,000 and $680,000 have been charged to earnings, the Case shareholder group as constituted before the merger must share the remaining earnings with the holders of the 553,852 shares of Case issued to the holders of the ATC common.

[fol. 687] (g) The statement that the Case common will not be "adversely affected" is false for the further reason that no statement was made apprising the Case shareholders that control of the Case Company was being placed in the hands of Rojtman, Elliott and those associated with them.

The passing of control of Case to these persons was further concealed by a misstatement in the proxy statement that Ellen B. Elliott (Wife of Elliott) held only 5,000 shares of ATC preferred when in fact she also held 90,000 shares of ATC common.

(h) While the letter and proxy statement overstate facts favorable to ATC, they tend to make the position of Case appear worse than it was in actuality. In particular, for ATC the prospectus sets forth the earned surplus account for the years from 1952 to a current date in 1956 (page 32). On page 26, however, similar information is presented with reference to Case for the period from 1953 to 1956. This fact is significant because in 1952 Case experienced a good year in which sales exceeded $153,000,000, net income exceeded $7,000,000 and earnings per share were $2.82, a sum more than double the book value of ATC common. Moreover, on page 26 of the proxy statement the net loss of Case for the nine months ended July 31, 1956 is stated to be $3,703,389. On the basis of this information the reader of the proxy statement would infer that the loss for the 1956 fiscal year would be approximately $5,000,000. In fact, however, the loss for 1956 was $987,000, an amount far less than the loss stated for the nine-month period. Since the letter and the prospectus were dated October 15, 1956, only two weeks short of the close of the 1956 fiscal year, the directors knew or should have known that the nine months' results gave a false picture of fiscal 1956.

(i) The proxy statement fails to state that the recipients of the stock options were the persons who had negotiated the terms of the merger which included the stock options.

[fol. 688] (j) The proxy statement fails to reveal that Grede Foundries Inc., which is owned and controlled by William J. Grede, was a supplier of castings to Case and

ATC and that it would receive a substantial increase in business as a result of the merger.

(k) The letter and proxy statement misstate that ATC was a then producer of medium size crawler tractors and that Case would gain an immediate entry into the road-building and heavy construction equipment business if the merger were approved.

(l) The proxy statement misrepresents ATC's current and prospective competitive situation.

(m) The letter and proxy statement misstate that Case and ATC branches, dealers and distributors would be capable of handling the merged line of equipment.

(n) The proxy statement fails to state that the Case common shareholders had preemptive rights to the shares of common and second preferred stock issued pursuant to the merger.

(o) The proxy statement fails to state that the stock market price of ATC common stock was inflated, maintained and manipulated.

15. These omissions, false representations and misleading statements in the letter and proxy statement were material to the merits of the merger proposal. The shareholders of Case relied thereon in voting on the merger. The merger was approved by a close margin. It would not have been approved if the letter and proxy statement had not contained such omissions, false representations and misleading statements.

16. The merger and stock option plans were tainted with self dealing by the "Case Management Group" (Brown, Grede and Clark M. Robertson, the latter being a director and general counsel) and the "ATC management group" (Rojtman, Elliott and Kraus). The Case management group promoted the merger in order to perpetuate themselves in office by shifting voting control of Case to Rojt-
[fol. 689] man, Elliott and their confederates. Rojtman and Elliott promoted the plan in part in order to obtain a market for their large holdings in ATC, the stock market

price of which had been inflated, maintained and manipulated by Rojtman and Elliott and their associates.

In arriving at a basis for exchange of stock on the merger the ATC management group insisted upon giving full effect to the current stock market price of ATC stock. The Case management group and other Case director defendants did give such effect to and relied upon the stock market price of ATC stock.

The stock market price of ATC was inflated, maintained and manipulated by Rojtman, Elliott and their confederates. The Case management knew and the other Case director defendants knew or in the exercise of ordinary care should have known that the market price of ATC was achieved in this illegal and artificial manner.

Brown, Grede and Rojtman were also guilty of self dealing in securing for themselves valuable stock options as one of the terms of the merger.

Grede, who was the prime mover of the merger for Case also was guilty of self dealing in that at the time of the merger his Company, Grede Foundries, Inc., was supplying castings to Case and ATC and after the merger his company received a substantial increase in business. In the fiscal years ending October 31, 1955 and 1956 Grede's combined sales of castings to Case and ATC were approximately $33,000 and $88,000, respectively; and after the merger, in fiscal 1957, 1958 and 1959, Grede's total sales to Case were approximately $435,000, $674,000 and $475,000, respectively. Neither Grede nor the other defendants having knowledge of these self dealing transactions revealed this information until plaintiff learned of it in the course of [fol. 690] taking the deposition of Grede. Thereafter Case has circumspectly stated this relevant information in its 1958 Debenture prospectus and Annual Proxy Statements to its shareholders.

17. The acts alleged in paragraphs 9-16 inclusive constitute actual or constructive fraud by defendants upon plaintiff and other shareholders similarly situated and such conduct deprived the latter of their preemptive rights.

18. If defendants had afforded plaintiff and other shareholders similarly situated to him the right to subscribe to

shares issued in the merger on the same basis granted to ATC shareholders, plaintiff and other shareholders similarly situated to him would have been entitled to purchase approximately one-quarter share of Case common and one-half share of second preferred stock for a total subscription price of approximately $2.20 for each share of Case common held by them at the time of the merger.

19. (a) The directors of Case included the future services of Rojtman and other ATC officials as part of the consideration paid by ATC for the issuance of Case shares. In fact, as a precondition to the merger the employment of Rojtman was arranged and in consideration thereof he was given an option to purchase 25,000 shares of common stock of Case. (The option period is ten years; the option price the fair market value of the stock on the date the option was granted.) Brown in his letter of October 15, 1956, held out as an inducement to the Case shareholders to approve the merger, the fact that Rojtman would become Executive Vice President and General Manager, a director and a member of the Executive Committee of the Board of Directors immediately after the merger. Subsequently, he became President.

(b) On or about February 1, 1960, Case suddenly announced that Rojtman had resigned as President of Case and that he had resigned as a member of the Board of Directors and Executive Committee. Case further an- [fol. 691] nounced that henceforth Rojtman was to be a special adviser to the President and the Case Executive Committee. He is not to make his headquarters at Racine, the site of Case's principal office, his position is not to be a full time one and he is to be consulted at Case's option. Pursuant to questioning by one of plaintiff's attorneys at the annual meeting of stockholders held on April 21, 1960, Grede revealed for the first time that Rojtman received a three year contract at $40,000.00 a year for such consulting service. In a printed brochure entitled "Statement of President—Annual Meeting of Stockholders—4-21-60", mailed to Case shareholders subsequent to said meeting, Grede does not mention Rojtman's contract for consulting service.

(c) Grede succeeded Rojtman as President of Case. On or about December 29, 1961 Grede resigned as President, Chairman of the Board of Directors and of the Executive Committee and as a director. At the same time Brown resigned as Vice Chairman of the Board of Directors and as a director. Only one of the Case directors who was serving as such in November, 1956 and who was named as a defendant remains a Case director (Hamilton).

(d) On or about December 29, 1961, Case also announced it (and its wholly owned subsidiary credit company) had secured another extension of its short term bank indebtedness of $162,000,000 for three years (the first extension was for $178,000,000 for about one year). But for these bank loan extensions, Case would be in bankruptcy, receivership or reorganization.

For the fiscal year ending October 31, 1960 Case had a net loss of $39,814,793 which reduced accumulated earnings to $13,100,391 from $42,932,616 at the time of the attempted merger. For the first 9 months of fiscal year 1961 Case's net loss was $7,121,308 and for the full year may exceed $10,000,000 reducing accumulated earnings to $3,000,000 or less.

[fol. 692] Case's losses and lack of funds also required it to stop dividend payments on its first preferred stock in 1961, dividends which had been paid continuously since 1935.

(e) On or about August 31, 1961 Case wrote off $11,546,066 of the excess of cost of ATC assets acquired over the assigned value thereof. According to the proxy statement the Case management's plan with respect to this excess was to "adopt a plan of amortization, over some period not in excess of 20 years * * * starting with the fiscal year beginning November 1, 1957. Such plan will provide for annual charges determined by the extent of the accomplished degree of integration of the companies' operations."

(f) Case also announced in 1961 that it was abandoning production of crawler tractors at the plant in Churubusco, Indiana, the only plant facility acquired from ATC.

20. Plaintiff and other holders of common stock of Case similarly situated to him have been severely and irreparably damaged by the failure to recognize their preemptive rights. They have no adequate remedy at law.

Wherefore, plaintiff prays that this Court:

I. Grant such of the following relief as it deems equitable:

a) Enter judgment in favor of the plaintiff and all other Case shareholders similarly situated and against the Case directors who approved the merger, Rojtman, Elliott and such of the other defendants as the Court finds responsible for the merger and the consequent deprivation of preemptive rights in an amount to be determined by the Court;

b) Enter a decree directing Case to issue to plaintiff and all other Case shareholders similarly situated and their successors in interest, on such terms as the Court may fix, such securities of Case as the Court deems necessary to compensate them for the violation in the merger of their preemptive rights.

[fol. 693] II. Grant such other and further relief, including allowances to plaintiff for his costs, disbursements and counsel fees, as equity shall require.

Count II

1. Jurisdiction is conferred on this court by: (1) Section 1332 of the Judicial Code (28 U.S.C. §1332) in that there is diversity of citizenship between the plaintiff and all defendants and in that the sum or value in controversy, exclusive of interests and costs, exceeds $10,000; (2) Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. §78 aa); (3) Section 1331 of the Judicial Code (28 U.S.C. §1331) in that the matter in controversy exceeds the sum or value of $10,000 and arises under the laws of the United States; and (4) Section 1337 of the Judicial Code (28 U.S.C. §1337) in that the action arises under an Act of Congress regulating commerce.

2. Plaintiff adopts and alleges as if specifically set forth herein, paragraphs 1-4, 6-12, 14-15 and 18 inclusive of Count I.

3. Defendants, by the use of the mails and other instrumentalities of interstate commerce, solicited or permitted the use of their names to solicit proxies by means of the proxy statement dated October 15, 1956 referred to herein, which proxy statement contained materially false and misleading statements and omissions of fact, all as set forth in particular in paragraphs 14-15 of Count I and realleged in paragraph 2 of Count II, in wilful violation of Sections 10(b) and 14(a) of the Securities and Exchange Act of 1934, 15 U.S.C. §§78j(b), 78 n (a) and Rules X-10b-5 and X-14a and particularly Rules X-14a-3(a) and X-14a-9 promulgated thereunder, 17 C.F.R. 240.10b5, 240.14a.

By reason of the violations of Sections 10(b) and 14(a) of the Securities and Exchange Act of 1934 and Rules [fol. 694] X-10b-5 and X-14a promulgated thereunder, as set forth above, the merger and all contracts made pursuant thereto between the defendants are void under Section 29(b) of the Securities and Exchange Act of 1934, 15 U.S.C. §78 cc (b).

4. By reason of the aforesaid violations of the Securities and Exchange Act of 1934 plaintiff and other holders of common stock of Case similarly situated to him have been severely damaged.

Wherefore, plaintiff prays that this Court:

I. Grant such of the following relief as it deems equitable:

(a) Declare and adjudge that (1) the proxy statement was false and misleading in material respects and the proxies solicited illegal and void, under sections 10(b) and 14(a) of the Securities and Exchange Act of 1934; and (2) the merger and all agreements made pursuant thereto are void under section 29(b) of said Act for violations of sections 10(b) and 14(a) of said Act;

(b) Enter a judgment for damages growing out of violations of the aforesaid provisions of the Act.

II. Grant such other and further relief, including allowances to plaintiff for his costs, disbursements and counsel fees, as equity shall require.

Alex Elson, Arnold I. Shure and Bruno V. Bitker,
By: Alex Elson.

Alex Elson, Arnold I. Shure, 11 South LaSalle Street, Chicago 3, Illinois; Bruno V. Bitker, 208 East Wisconsin Avenue, Milwaukee, Wisconsin, Attorneys for Plaintiff.

[fol. 695] *Duly sworn to by Carl H. Borak, jurat omitted in printing.*

[fol. 708] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

No. 56 C 247

[Title omitted]

NOTICE OF MOTION REQUIRING PLAINTIFF TO GIVE SECURITY, ETC.—Filed January 26, 1962

To: Alex Elson, 11 South LaSalle Street, Chicago 3, Illinois; Bruno Bitker, 208 E. Wisconsin Avenue, Milwaukee 2, Wisconsin; Arnold I. Shure, 11 South LaSalle Street, Chicago 3, Illinois, Attorneys for the Plaintiff.

Please Take Notice that upon the affidavit of Walter S. Davis dated July 19, 1960, and filed with this Court on that date, and upon all prior pleadings and proceedings herein, the undersigned will renew its motion before this Court at its courtroom in the Federal Building in the City of Milwaukee, Wisconsin, at such time as the Clerk shall fix, for an order:

1. Requiring the plaintiff to give security pursuant to the provisions of Section 180.405(4) of the Wisconsin Statutes, 1957, in the amount of One Million Dollars ($1,000,000) for the reasonable expenses, including attorneys' fees,

which have been or may be incurred by the defendant J. I. Case Company in connection with this action, and for such [fol. 709] expenses as have been or may be incurred by others who are or may become parties defendant, for the payment of which J. I. Case Company may become liable pursuant to Section 180.407 of the Wisconsin Statutes, 1957, or otherwise, on the ground that the plaintiff owns less than three per cent (3%) of the outstanding shares of said J. I. Case Company; and

2. Providing that, pending deposit of such security, all further proceedings on behalf of the plaintiff be stayed; and

3. Directing that, if the plaintiff should fail to give security within the time and in the manner directed, the Clerk of the Court, upon proofs by affidavit by the defendant J. I. Case Company that the plaintiff has failed to file a security within the time and in the manner provided, shall enter judgment dismissing the action as to all the defendants, with costs.

Robertson, Hoebreckx & Davis, By Walter S. Davis,
Attorneys for the Defendant, J. I. Case Company.

324 E. Wisconsin Avenue, Milwaukee 2, Wisconsin, Of Counsel: H. Maxwell Manzer, 1 S. Pinckney Street, Madison 3, Wisconsin.

[fol. 719] [File endorsement omitted]

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

No. 56-C-247

CARL H. BORAK, for and on behalf of himself and all of the other common stockholders of J. I. CASE COMPANY, who are similarly situated to him, Plaintiff,

—vs.—

J. I. CASE COMPANY, a Wisconsin corporation, MARC B. ROJTMAN, individually and as representative of all AMERICAN TRACTOR CORPORATION shareholders who received J. I. CASE COMPANY common and second preferred stock in the merger herein referred to, and their successors in interest, JOHN B. ELLIOTT, Executor of the Estate of Edward L. Elliott, deceased, A. O. CHOATE, WILLIAM EWING, L. R. CLAUSEN, H. S. STURGIS, JOHN T. BROWN, H. G. BARR, WILLIAM J. GREDE, E. P. HAMILTON, WILLIAM B. PETERS, MENTOR KRAUS, and NATHANIEL C. BEEBER, individually and as representative of all holders of common stock purchase warrants issued by American Tractor Corporation to the purchasers of its preferred stock, Series 56-1, Defendants.

OPINION—September 4, 1962

This action was commenced on November 13, 1956, when the plaintiff, Carl H. Borak, filed his complaint against the J. I. Case Company, John T. Brown, H. G. Barr, L. R. Clausen, William J. Grede and William B. Peters, the individual defendants being officers and/or directors of Case, alleging that a then proposed plan of merger between Case and American Tractor Corporation was against the best interests of Case's common stockholders, of whom the plaintiff was one, and had not been formulated or developed in conformity with the obligations imposed by law on Case's officers and directors, and asking that the court declare the

[fol. 720] plan of merger and any action taken pursuant thereto illegal and void and enjoin the defendants from further acting to consummate the plan. That same day, on application of the plaintiff, the court ordered Case to show cause why it and its officers, agents and employees should not be restrained, pending final hearing of this cause, from taking any steps to advance the plan of merger. A hearing on the order to show cause was scheduled for and held on November 14 and 15, 1956, at which counsel for the plaintiff stated that he was not claiming that there was any fraud in this case. Following the hearing the court denied the plaintiff's application for a temporary injunction. The merger plan was approved by Case stockholders on November 15, 1956, and consummated shortly thereafter.

Shortly after issue was joined by the filing of the answer on November 26, 1956, the court held the first of many conferences in this case. Plaintiff's counsel there stated that the nature of the case demanded resort to very extensive discovery procedures before he could file an amended complaint. It was not until April 1, 1958 that the first amended and supplemental complaint was filed. In this amended and supplemental complaint which named as defendants the original defendants, other directors of Case, and others who allegedly benefitted by the merger of Case with American Tractor Corporation, the plaintiff asked in part that the court declare the plan of merger and action taken pursuant thereto illegal and void and enter judgment in favor of him and all Case shareholders similarly situated and against those responsible for the merger for $12,000,000, or enter a decree setting aside the merger, or enter a decree determining the fair market value of American Tractor Corporation assets acquired by Case and directing American Tractor Corporation shareholders who received Case stock as a result of the merger to surrender for cancellation such portion thereof as the court deemed equitable, or enter a decree determining the fair market value of American Tractor Corporation assets acquired by Case and directing [fol. 721] Case to issue to plaintiff and other Case shareholders similarly situated such securities as the court deemed necessary to make equitable the relative interests of such shareholders and shareholders acquiring securities in

the merger, and that the court adjudge certain stock options illegal and void and order cancellation thereof, and forbid the exercise for the purchase of Case stock of certain stock purchase warrants as provided in the plan of merger and cancel such warrants.

Six days thereafter, the defendants moved for an order pursuant to §180.405(4), Wisconsin Statutes, requiring the plaintiff to give security for reasonable expenses incurred by Case in connection with this action or incurred by other defendants but for which Case may become liable, and directing that if plaintiff failed to give security the Clerk of Court should enter judgment dismissing the action as to all defendants. On October 13, 1958, the court rendered an oral decision holding that the plaintiff must furnish security under the statute in the amount of $75,000. At that time plaintiff requested time within which to consider whether to amend his complaint and to attempt to secure agreement from other shareholders to join with him in this action.[1]

On October 23, 1958, the court entered its order directing plaintiff, on or before December 12, 1958, to furnish defendant with security for reasonable expenses in the amount of $75,000 and providing that if such security was not furnished as directed judgment dismissing the action would be entered. The order further provided that nothing therein contained should be construed so as to prevent plaintiff from seeking leave to file an amendment to his amended and supplemental complaint prior to December 12th joining as additional parties plaintiff the holders of at least 3% of Case's common stock.

[fol. 722] On December 2, 1958, the plaintiff filed a motion for re-hearing, asking in part that the order of October 23, 1958 be vacated. On December 16, 1958, Case moved for dismissal of the action on the grounds that no security had been furnished as required by the order of October 23, 1958. The plaintiff's motion for re-hearing was denied and the defendant's motion for dismissal was granted on September 17, 1959. A notice of appeal was filed by plaintiff on October 16, 1959. Five days there-

[1] Section 180.405(4) requires security on application of the defendants only in derivative actions brought by the holders of less than 3% of any class of issued and outstanding shares.

after, the plaintiff moved for leave to file a second amended and supplemental complaint, to dismiss certain of the defendants, and to vacate the order of September 17, 1959 dismissing this action or to modify that order by permitting the filing of the second amended and supplemental complaint. The proposed amended complaint attached to the motion, like the first and second complaints, set forth §1332, Title 28 U. S. C. as the section conferring jurisdiction. The plaintiff asserted, however, that this complaint set forth a representative, and not a derivative, cause of action and that §180.405(4) would not be applicable thereto.

After the plaintiff moved to dismiss his appeal, which motion was granted, the court entered an order on March 10, 1960, vacating and setting aside the order of dismissal, granting the plaintiff leave to dismiss certain defendants, and granting him leave to file the second amended and supplemental complaint. Certain of the defendants appealed from this order, but the plaintiff's motion to dismiss the appeal was granted by the Court of Appeals and the mandate of that court was filed in this court on May 16, 1960.

On May 13, 1960 the plaintiff moved for leave to file a supplement to the second amended and supplemental complaint adding additional facts. This motion was heard on June 20, 1960, and the court granted the plaintiff leave [fol. 723] to file his second amended and supplemental complaint including the proposed supplement thereto within ten days. This order provided that the defendants should file their answer or otherwise plead to this complaint within twenty days of service.

The plaintiff's second amended and supplemental complaint was filed on July 1, 1960. We must here note that this pleading differed substantially from the proposed pleading which the plaintiff was granted leave to file and that no leave was requested for this variance. As stated before, the proposed second amended and supplemental complaint relied upon §1332, Title 28, U. S. C. as conferring jurisdiction on this court. The complaint as filed charged violation of the Securities Exchange Act of 1934 and relied for jurisdiction not only on §1332 but also on

§27 of that Act (15 U. S. C. 78aa and on §1331 and §1337, Title 28 U. S. C.

On July 19, 1960, the defendant Case filed another motion pursuant to §180.405(4) for security which motion came on for hearing on January 2, 1962. At that time, because the court believed that the plaintiff had improperly joined two causes of action in a single count, it directed him to file an amended complaint separating his cause of action based on diversity of citizenship from his cause of action based on claimed violations of Federal law by January 12, 1962. We also directed defendants to file their responsive pleadings by January 27, 1962 and provided that if motions were filed by the defendants, briefs in support of and in opposition to such motions would be filed by January 27 and February 6, 1962 respectively. On stipulation of the parties, the time for filing briefs was thereafter extended.

Plaintiff's third amended and supplemental complaint was filed on January 12, 1962. On January 26, 1962, Case [fol. 724] again filed a motion for security asking that the plaintiff be required to give security pursuant to §180.405(4), Wisconsin Statutes, in the amount of $1,000,000 for reasonable expenses which have been or may be incurred by that defendant in connection with this action and for such expenses as have been or may be incurred by others who are or may become parties defendant for the payment of which Case may become liable, and asking that pending deposit of such security all further proceedings on behalf of the plaintiff be stayed, and directing that if plaintiff failed to give security as directed the Clerk of Court shall enter an order dismissing the action as to all defendants. A hearing thereon was held on May 28, 1962.

The third amended and supplemental complaint consists of two counts. In the first, the plaintiff relies on diversity of citizenship as a jurisdictional basis and alleges that he, the owner of 2000 shares of Case common stock acquired prior to the merger complained of, sues in a representative capacity on behalf of himself and all other common stockholders prior to the merger except those participating in or cognizant of the wrongdoing

alleged. In addition to Case, he joins as defendants certain of its directors and former directors, some of whom are also officers and former officers, and the executor of the estate of a deceased director. Defendants who are now directors of Case are sued individually and as directors, the defendant Rojtman is sued individually and as representative of American Tractor Corporation shareholders receiving Case stock as the result of the merger between Case and American Tractor Corporation, and the defendant Beeber is also sued, individually and as representative of holders of certain purchase warrants. In Count 1, the plaintiff alleges substantially as follows:

> In October 1956, Case formally announced to its shareholders a proposed plan of merger between Case [fol. 725] and American Tractor Corporation and proposed stock option amendments, which were purportedly approved by Case shareholders on November 15, 1956. The merger was purportedly consummated on January 10, 1957. Both the merger and stock option plan were effectuated by illegal and fraudulent acts and illegally deprived the plaintiff and other shareholders similarly situated of their pre-emptive rights—rights which the plaintiff here seeks to enforce. Under the merger and plan, 648,852 shares of common stock and 1,197,704 shares of second preferred stock were set aside or issued without granting the plaintiff's class their pre-emptive rights to subscribe thereto.

The plaintiff then describes in some detail the acts which he believes to have resulted in a violation of the pre-emptive rights of Case shareholders as follows:

> In 1954, Elliott's company and a syndicate headed by him acquired 170,000 shares of American Tractor Corporation stock. Elliott violated the Securities Act of 1933 and regulations thereunder in connection with that stock and the sale of a portion thereof. Thereafter, the market price of American Tractor Corporation stock, most of which was held by Elliott, Rojtman and their associates, began an unreasonable rise due to illegal manipulations, which manipulations Elliott was aware of.

Case directors violated Wisconsin law and breached their fiduciary duties in approving the merger by in- [fol. 726] cluding future earnings of American Tractor Corporation and future services of its officials as partial consideration for issuance of Case stock, by agreeing to issue Case stock at less than par value, by failing to evaluate properly the American Tractor Corporation assets acquired and paying an excessive price for American Tractor Corporation, by overvaluing American Tractor Corporation's and undervaluing Case's earnings and book value resulting in a fraud on Case shareholders, by relying on market price of American Tractor Corporation stock as a measure of American Tractor Corporation's value, by relying on American Tractor Corporation's own appraisal of its physical assets and failing to examine that appraisal, by considering future earnings as an element of value and by failing to recognize the necessity of future investments as part of the cost of the merger.

Case directors breached their fiduciary duties by approving and issuing a letter and proxy statement of October 15, 1956, prior to the meeting at which the merger was approved which contained numerous material omissions and false and misleading statements relied upon by Case shareholders in approving the merger and without which the merger would not have been approved. Three pages of the complaint are given over to instances thereof.

Both the Case and American Tractor Corporation management groups were guilty of self-dealing in connection with the plan and merger.

The conduct of the defendants, the plaintiff claims, constitutes actual or constructive fraud on himself and other [fol. 727] shareholders similarly situated depriving them of their pre-emptive rights. He claims that if they had been permitted to purchase stock issued in the merger on the same basis as American Tractor Corporation shareholders, they could have obtained one-fourth share of common stock and one-half share of second preferred stock for $2.20 for each share of Case common stock held by them at the time of the merger.

In Paragraph 19 of Count 1 of his complaint, the plaintiff alleges facts occurring after the merger, in Paragraph 20 he alleges that the class he represents has been irreparably damaged by failure to recognize pre-emptive rights, and in his prayer for relief he asks that the court enter judgment in favor of the class he represents and against Case directors who approved the merger and all defendants the court finds responsible for the merger *and* the consequent deprivation of pre-emptive rights in an amount to be determined and/or that the court enter a decree directing Case to issue to the class he represents such securities of Case as the court deems necessary to compensate the class for the violation of pre-emptive rights, and asks for such other relief as equity shall require.

In Count 2 of the complaint plaintiff asserts that the court has jurisdiction by reason of diversity of citizenship and under Federal law, charging that defendants violated the Securities Exchange Act of 1934 and regulations promulgated thereunder damaging the plaintiff and other common stockholders similarly situated, and that the merger and all contracts made pursuant thereto by the defendants are void. He asks that the court declare and adjudge that the proxy statement of October 15, 1956 was false and misleading and the proxies thereby solicited illegal and void under §10b and 14a of the Act, and that the merger and all agreements pursuant thereto are therefore void under §29b of the Act. He further asks a judgment for damages growing out of the violations of the Act and for [fol. 728] such other relief as equity shall require.

We are here concerned with the question of whether the provisions of §180.405(4) are applicable to the causes of action alleged by the plaintiff in his third amended and supplemental complaint. Because the court has previously treated the applicability of that section at great length in its oral opinion of October 13, 1958, we shall not reiterate all that has previously been stated in that regard, but shall merely state that on that date, after reviewing the applicable authorities, we pointed out that the provisions of that section are applicable only to actions brought "in the right of" a corporation, that is, derivative actions, and not to actions brought by a stockholder in his own behalf, that is, representative actions. We held that the plaintiff alleged a derivative cause of action in his amended and supple-

mental complaint. In so holding, however, we stated: (Page 7 of Transcript)

> "It seems clear to us that Wisconsin courts have generally held that where the injury suffered by the plaintiff stockholder is no different from, and is suffered in common with, that suffered by the other stockholders, an action to correct it is derivative, because the primary wrong is to the corporation, but where the injury is peculiar to the plaintiff, an action to correct it is representative. The only exception to this rule is that where the rights of stockholders to maintain their proportionate voice and influence in the corporation, which right is an individual one, is injured by an illegal issuance of stock, an action to cancel such stock is held to be representative even though the injury is common to all stockholders."

In his second and third amended and supplemental complaints, the plaintiff has grasped at the exception stated in the court's oral opinion of October 13, 1958, and attempted to bring himself within that exception. He has also added charges of violation of Federal law. In Count 1 of the third amended complaint, the only complaint with which we are now concerned, he has alleged the same facts which the court previously held asserted a derivative cause of [fol. 729] action to which §180.405(4) is applicable, garnished those facts with conclusory allegations that pre-emptive rights have been violated and asserted that he brings this action to enforce pre-emptive rights. In his carefully worded prayer for relief however, he does not ask this court only to enforce those rights or compensate him and others similarly situated for the loss thereof, but asks for judgment against those responsible for the merger and consequent deprivation of pre-emptive rights in an amount to be determined by the court. After reviewing the allegations of Count 1, it is clear to us that the plaintiff still complains of fraud and self-dealing, failure of directors to perform their fiduciary duties, etc., as in the first amended and supplemental complaint, and seeks redress for the alleged wrongs on behalf of the corporation. He does not allege any wrong to himself different from that suffered by other stockholders, nor limit the relief sought to

damages sustained by reason of loss of pre-emptive rights. He is concerned in our opinion not with the fact that stock was issued to others without being offered first to Case stockholders but with the fact that stock was issued for an allegedly insufficient consideration. We therefore hold that §180.405(4) is applicable, that Count 1 sets forth a derivative cause of action and that the plaintiff must furnish security for reasonable expenses.

We believe further that §180.405(4) is applicable in part to the cause of action alleged in Count 2 of the third amended and supplemental complaint. In this count, as in the second amended and supplemental complaint, the plaintiff asserts that jurisdiction exists under §1332, 1331 and 1337, Title 28 U. S. C. and under §27 of the Securities Exchange Act of 1934, 15 U. S. C. 78aa. Unlike the second amended and supplemental complaint, however, Count 2 charges violation of §10b of that Act, 15 U. S. C. 78j(b) and 14a of that Act, 15 U. S. C. 78n(a), whereas the second amended and supplemental complaint alleged as a basis for [fol. 730] recovery under Federal law violation of §14a only.

In preparation for the hearing of January 2, 1962 on the motion for security directed to the second amended and supplemental complaint, this court came upon the case of *Dann* v. *Studebaker-Packard Corporation* (C. A. 6, 1961) 288 F. 2d 201. Because we believed that that case could be read to constitute authority for holding that the plaintiff, in seeking damages for violation of §14a, was seeking relief which this court had jurisdiction to grant only under state law, we directed the attention of counsel for the parties to it for their comment. We think it not unreasonable to infer that counsel for the plaintiff thought the *Dann* case persuasive, since it apparently induced him to add an allegation of violation of another section, §10b, when, pursuant to the court's direction that he separate his causes of action, he filed the third amended and supplemental complaint.

The plaintiff contends that because jurisdiction over Count 2 is invoked under Federal law, the Wisconsin security statute is not applicable. It is our belief, however, that since the plaintiff also invokes jurisdiction by reason of diversity and seeks relief which, under the ruling in the

Dann case, is available to him only under state law, that section is applicable.

In the *Dann* case, as in this, the plaintiff complained of violations of §14a of the Securities Exchange Act of 1934, and with respect to such violations relied upon §27 of the Act and §1331, Title 28 U. S. C. for jurisdiction.[2] In *Dann*, the plaintiff sought a declaration that allegedly improperly solicited proxies were void and demanded certain affirma- [fol. 731] tive relief. The Court, in discussing the type of relief available under Federal law for the alleged violation of federally protected rights stated:

> ". . . we are without jurisdiction to grant the relief sought in this complaint insofar as it seeks to rescind corporate transactions already consummated because of allegedly improperly solicited proxies. In reaching this decision, we are deciding that federal jurisdiction must end with the holding of a contested proxy election, that the right created by Section 14(a) of the Exchange Act is only broad enough to permit consideration of the *validity* of the proxies solicited in violation thereof, but it is not broad enough to permit the federal courts to determine the consequent *effects* of the validity or invalidity of said proxies. This latter determination raises issues which concern matters of local law alone." (Page 214)

and held that federal courts had jurisdiction only to declare either the validity or invalidity of the proxies which the plaintiff claimed were void and that the affirmative relief sought by the plaintiff was not within the jurisdiction of federal courts to grant.

The plaintiff, here, however, also alleges that the defendants violated §10b of that Act, 15 U. S. C. 78j(b). As stated before this allegation was not contained in the second amended and supplemental complaint but was inserted in the third amended and supplemental complaint without authority, after the court had directed counsel's attention

---

[2] The plaintiff here has also cited §1337, Title 28 U. S. C. as a jurisdictional basis, but we do not consider this a significant distinction from the *Dann* case.

to the *Dann* case, in an apparent attempt to circumvent the ruling in that case. It is true that it has been generally held that §10b, unlike §14a, creates a civil right of action for damages in persons injured by violation thereof. However, the plaintiff's conclusory allegation that §10b has been violated in Paragraph 3 of Count 2 does not distinguish this case from the *Dann* case. The facts which plaintiff alleges as constituting a violation of §10b, that is, the soliciting of proxies by means of a proxy statement containing false and misleading statements and omissions of fact, constitute, if [fol. 732] true, a violation of §14a and not of §10b. It is §14a and not §10b which protects "the stockholders' right to full and fair disclosure in corporate elections by proxy." (Page 208 of the *Dann* case)

In Count 2 of the complaint presently before us, the plaintiff not only seeks the only relief available to him under Federal law under the ruling of the *Dann* case, with which we agree, that is, a declaration that the proxy statement was false and misleading and the proxies solicited illegal and void as a result of which the merger and agreements pursuant thereto were void under §29b of the Act,[3] but also asks for a judgment for damages growing out of violations of the Act. He does not here ask for damages for violation of pre-emptive rights only, but seeks damages resulting from the alleged breach by the defendant Case directors of their fiduciary duties in issuing a false and misleading proxy statement which resulted in approval of the merger. Insofar as he seeks damages in Count 2, the plaintiff is seeking relief available to him only under state law.[4] While this court has jurisdiction to grant such relief, since the plaintiff here unlike the plaintiff in the *Dann* case has alleged diversity of citizenship, it must be held that the

[3] We do not agree with plaintiff's contention that §29b clearly provides for retrospective relief. In our opinion the reasoning of the court in the *Dann* case can be applied to actions alleging invalidity of contracts under §29 where the violations alleged are violations of §14a.

[4] In this respect, it must be noted that the plaintiff has failed to comply with the court's direction of January 2, 1962, to file a complaint separating his cause of action based on diversity from his cause of action based on claimed violations of Federal law.

cause of action set forth in Count 2, insofar as it seeks relief under state law is one to which the provisions of §180.405(4) apply.

For the above and foregoing reasons we have this day entered an order granting in part the defendant's motion for security.

Dated, Milwaukee, Wisconsin, this 4th day of September, 1962.

Robert E. Tehan, U. S. District Judge.

[fol. 733] [File endorsement omitted]

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

[Title omitted]

ORDER REQUIRING PLAINTIFF TO GIVE SECURITY, ETC.—September 4, 1962

The plaintiff having filed his third amended and supplemental complaint herein on January 12, 1962, and the defendant, J. I. Case Company, having on January 26, 1962 moved for an order (1) requiring the plaintiff to give security for reasonable expenses in the sum of $1,000,000 pursuant to §180.405(4), Wisconsin Statutes, and, (2) pending deposit of such security, staying all further proceedings on behalf of the plaintiff, and, (3) directing that if the plaintiff failed to give security within the time and in the manner directed, the Clerk of Court, upon proof by affidavit by the defendant, J. I. Case Company, that the plaintiff has failed to file security within the time and in [fol. 734] the manner provided shall enter judgment dismissing the action with costs, and said motion having come on for hearing on May 28, 1962, and briefs with respect thereto having been filed, and the court having heard oral argument and considered the briefs and having this day filed its opinion, and being fully informed,

Now, Therefore, It Is Ordered:

1. That the plaintiff be and he is hereby directed to furnish the defendant, J. I. Case Company, on or before September 28, 1962, with security for reasonable expenses, pursuant to §180.405(4), Wisconsin Statutes, including attorneys' fees, in the form of a surety bond of a company duly licensed to write such bond in the State of Wisconsin, in the amount of $75,000, or cash in said amount, securing the defendant, J. I. Case Company, for its reasonable expenses, including attorneys' fees, in this action and for reasonable expenses including attorneys' fees for which it may become liable by reason of the provision of §180.407, Wisconsin Statutes.

2. That if the plaintiff fails to furnish security within the time and in the amount and manner provided in Paragraph I, judgment dismissing the action as to all the defendants, excepting that portion of the action in which the plaintiff seeks a judgment declaring and adjudging that the proxy statement dated October 15, 1956 was false and misleading in material respects and the proxies solicited illegal and void under §14a of the Securities Exchange Act of 1934 and that the merger between J. I. Case Company and American Tractor Corporation and all agreements made pursuant thereto are void under §29b of said Act for violations of §14a of said Act, will be entered.

3. That if the plaintiff fails to furnish security within the time and in the amount and manner provided in Paragraph I, he shall file a fourth amended and supplemental complaint not later than September 28, 1962, alleging only the cause of action for violation of §14a of the Securities [fol. 735] Exchange Act of 1934 for a declaratory judgment that the proxy statement dated October 15, 1956 was false and misleading in material respects and the proxies solicited illegal and void under §14a of the Securities Exchange Act of 1934 and that the merger between J. I. Case Company and American Tractor Corporation and all agreements made pursuant thereto are void under §29b of said Act for violations of §14a of said Act.

4. That the defendants will answer or otherwise plead to the fourth amended and supplemental complaint, if filed, not later than twenty (20) days after service thereof.

Dated, Milwaukee, Wisconsin, this 4th day of September, 1962.

Robert E. Tehan, U. S. District Judge

[fol. 739]

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

[Title omitted]

ORDER STRIKING COMPLAINT, ETC.—October 1, 1962

This matter coming on to be heard on the motion of plaintiff for an order, pursuant to §1292 (b) of the Judicial Code (28 U.S.C.A. §1292(b)) and counsel for the plaintiff having stated in open court that the bond in the amount of $75,000 as security pursuant to §180.405(4), Wisconsin Statutes as ordered by this Court on September 4, 1962 will not be posted,

And the Court having set forth the reasons why a bond is required in the opinion of this Court dated and filed on September 4, 1962, and being fully informed,

Now, Therefore, It Is Ordered:

1. The Complaint is stricken for failure to post the bond as ordered, as to all of the defendants excepting that por-
[fol. 740] tion of the action in which the plaintiff seeks a judgment declaring and adjudging that the proxy statement dated October 15, 1956 was false and misleading in material respects and the proxies solicited illegal and void under §14a of the Securities Exchange Act of 1934 and that the merger between J. I. Case Company and American Tractor Corporation and all agreements made pursuant thereto are

void under §29b of said Act for violations of §14a of said Act.

2. Plaintiff shall file a fourth amended and supplemental complaint not later than 20 days from the date hereof, alleging only the cause of action for violation of §14a of the Securities Exchange Act of 1934, for a declaratory judgment that the proxy statement dated October 15, 1956 was false and misleading in material respects and the proxies solicited illegal and void under §14a of the Securities Exchange Act of 1934 and that the merger between J. I. Case Company and American Tractor Corporation and all agreements made pursuant thereto are void under §29b of said Act for violations of §14a of said Act.

3. The defendants will answer or otherwise plead to the fourth amended and supplemental complaint, not later than twenty (20) days after service thereof.

4. The Court is of the opinion that the within order involves controlling questions of law as to which there are substantial grounds for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation.

5. It is further ordered that proceedings in this court shall be and hereby are stayed pending disposition of the appeal by the Court of Appeals.

Dated, Milwaukee, Wisconsin, this 1st day of October, 1962.

Enter:

Robert E. Tehan, U. S. District Judge.

[fol. 741] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

Chicago 10, Illinois

No. 13947

Appeal from the United States District Court for the Eastern District of Wisconsin.

CARL H. BORAK, Plaintiff-Appellant,

vs.

J. I. CASE COMPANY, et al., Defendants-Appellees.

ORDER GRANTING LEAVE TO APPEAL—October 24, 1962

On consideration of the petition of the plaintiff, Carl H. Borak, for leave to appeal under Section 1292(b), Title 28 U.S C.A., from an interlocutory order of the United States District Court for the Eastern District of Wisconsin in Civil Action No. 56-C-247, entered on October 1, 1962; brief in support of petition; appendices to petition; and defendants' verified answer to said petition;

It Is Ordered by the Court that said petition of Carl H. Borak be, and the same is hereby granted, and that leave to appeal from such interlocutory order of October 1, 1962, is hereby allowed.

It Is Further Ordered that a certified copy of this order be transmitted forthwith by the Clerk of this Court to the Clerk of the United States District Court for the Eastern District of Wisconsin.

A True Copy:

Kenneth J. Carrick, Clerk of the United States Court of Appeals for the Seventh Circuit.

Teste:

[fol. 742]

IN UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 13947 September Term, 1962 April Session, 1963

On Appeal from the United States District Court for the Eastern District of Wisconsin.

CARL H. BORAK, for and on behalf of himself and all of the other common stockholders of J. I. CASE COMPANY who are similarly situated to him, Plaintiff-Appellant,

v.

J. I. CASE COMPANY, a Wisconsin corporation, MARC B. ROJTMAN, individually and as representative of all AMERICAN TRACTOR CORPORATION shareholders who received J. I. CASE COMPANY common and second preferred stock in the merger herein referred to, and their successors in interest, JOHN B. ELLIOTT, Executor of the Estate of Edward L. Elliott, deceased, A. O. CHOATE, WILLIAM EWING, L. R. CLAUSEN, H. S. STURGIS, JOHN T. BROWN, H. G. BARR, WILLIAM J. GREDE, E. P. HAMILTON, WILLIAM B. PETERS, MENTOR KRAUS, and NATHANIEL C. BEEBER, individually and as representative of all holders of common stock purchase warrants issued by American Tractor Corporation to the purchasers of its preferred stock, Series 56-1, Defendants-Appellees.

OPINION—May 29, 1963

Before DUFFY and KILEY, *Circuit Judges*, and MERCER, *District Judge*.

MERCER, *District Judge*. Plaintiff, Carl H. Borak, the holder of 2,000 common shares of J. I. Case Company, hereinafter referred to as Case, commenced this suit below

on November 13, 1956, by filing his complaint in which he [fol. 743] sought to have the then proposed plan of merger between Case and American Tractor Corporation, hereinafter ATC, declared illegal and void and to have Case and its officers and directors enjoined from taking any action to consummate the plan. Injunctive relief was denied. Subsequently plaintiff has filed three amended and supplemental complaints, the third of which was filed on January 12, 1962. It is that complaint which gives rise to this appeal. That complaint is in two counts, the first of which is based upon the laws of the state of Wisconsin and invokes the court's jurisdiction on the basis of diversity of citizenship. The second count purported to allege violations of Section 10(b) and 14(a) of the Securities Exchange Act of 1934, 15 U. S. C. A. 78j(b), 78n(a), and the jurisdiction of the court over that count is asserted to exist by reason of the provisions of Section 1331 and Section 1337 of the Judicial Code, 28 U. S. C. A. 1331, 1337, and Section 27 of the Securities Exchange Act. 15 U. S. C. A. 78aa.[1]

After the third amended complaint was filed, the defendants[2] filed a motion for an order to compel plaintiff to

---

[1] "The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws or treaties of the United States." 28 U. S. C. A. 1331(a).

"The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies." 28 U. S. C. A. 1337.

"The district courts of the United States * * * shall have exclusive jurisdiction of violations of this chapter or the rules and regulations thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by this chapter or the rules and regulations thereunder. * * *" 15 U. S. C. A. 78aa.

[2] The identity of persons who have from time to time been named defendants in this suit has varied in the several amended complaints. Since the precise identity of the persons who are defendants has no particular bearing upon the issues presented on this appeal, the term "defendants", when used in this opinion, is a reference to all persons who were so named at any particular stage of the proceedings below as the context may require.

provide security for expenses incurred and to be incurred by the defendants in defending the suit to comply with the provisions of Wis. Stat. § 180.405(4).[3] After a hearing [fol. 744] upon that motion the court filed an opinion holding that the only cause of action stated in count 1 of the complaint was derivative in nature and that the Wisconsin security for expense statute applied thereto, that count 2 does not state a cause of action under Section 10b of the Act,[4] that the only relief which it had jurisdiction to grant under Section 14(a)[5] of the Act was a declaratory judgment as to the validity or invalidity of the proxies involved in the suit, and that, insofar as count 2 prayed relief other than such a declaratory judgment, that count also stated a derivative cause of action under Wisconsin law, which was

---

[3] "In any action brought in the right of any foreign or domestic corporation by the holder or holders of less than 3 per cent of any class of shares issued and outstanding, the defendants shall be entitled on application to the court to require the plaintiff or plaintiffs to give security for the reasonable expenses, including attorney's fees. * * *" Wis. Stat. 1961 § 180.405(4).

This statute is sometimes in the opinion referred to as "the Wisconsin statute", without more precise description thereof.

[4] "It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange . . .

"(a) * * *

"(b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors." 15 U. S. C. A. 78j(b).

[5] "(a) It shall be unlawful for any person, by the use of the mails or by any means or instrumentality of interstate commerce or of any facility of any national securities exchange or otherwise to solicit or permit the use of his name to solicit any proxy or consent or authorization in respect of any security * * * registered on any national securities exchange in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors." 15 U. S. C. A. 78n(a).

subject to the provisions of the Wisconsin security for expense statute. Accordingly, the court ordered plaintiff to furnish a bond in the amount of $75,000.00, conditioned for the payment of expenses to be incurred by the defendants in defending the suit. Upon plaintiff's refusal to provide security in accordance with that order, the court ordered that count 1 of the complaint be dismissed and that count 2 thereof likewise be dismissed, except to the extent that that count might be construed as a suit under Section 14(a) for a declaratory judgment as to the validity of the proxies solicited for the Case-ATC merger. This interlocutory appeal was then taken pursuant to the provisions of 28 U. S. C. A. 1292(b) and the order of this court, entered October 24, 1962, granting to plaintiff leave to appeal.

Three issues are presented on this appeal. First, did the court below err in its conclusion that the cause of action stated in count 1 of the complaint was derivative in nature and therefore subject to the provisions of Wisconsin security for expense statute? Second, did the court below err [fol. 745] in its holding that the Wisconsin statute applies to count 2 of the complaint insofar as that count sought retrospective relief? Third, did the court below err in holding that count 2 of the complaint did not state a cause of action under Section 10(b) of the Securities Exchange Act?

With respect to count 1 of the complaint, the only issue before us for decision is the question whether the court correctly held the provisions of the Wisconsin statute applicable to plaintiff's cause of action. As the court recognized in its opinion, that issue depends upon a determination whether the allegations of the complaint state a derivative cause of action brought on behalf of the corporation, or a primary cause of action to redress an injury to plaintiff as a Case stockholder. If the cause of action stated is derivative, then the statute was properly applied. If it is not derivative, but is a primary right in the plaintiff, the statute has no application.

Plaintiff's first amended and supplemental complaint asserted a derivative cause of action on behalf of the corporation. After the court ruled that the Wisconsin statute

applied to the case and ordered plaintiff to furnish bond in the amount of $75,000.00, plaintiff amended his complaint in an attempt to allege the denial of his preemptive right to participate in the issuance of Case shares and an injury to himself, individually, as a shareholder of Case. He supported that allegation by the reallegation of essentially the same material facts which were alleged in the first amended complaint.[6]

In holding the Wisconsin statute applicable to count 1 of the third amended complaint, the court below said, in part:

> "After reviewing the allegations of count 1, it is clear to us that the plaintiff still complains of fraud and self-dealing, failure of directors to perform their fiduciary duties, etc., as in the first amended and supplemental complaint, and seeks redress for the alleged wrong in behalf of the corporation. He does not allege any wrong to himself different from that suffered by other stockholders, nor limit the relief sought to damages sustained by reason of loss of pre-emptive rights. [fol. 746] He is concerned in our opinion not with the fact that stock was issued to others without being first offered to Case stockholders but with the fact that stock was issued for an allegedly insufficient consideration. We therefore hold that § 180.405(4) was applicable, that count 1 set forth a derivative cause of action and that the plaintiff must furnish security for reasonable expenses."

The principle that directors of a corporation owe a fiduciary duty to the corporation and the stockholders thereof, to deal honestly in corporate affairs is hornbook law requiring no citation of authority. As it affects the rights of shareholders, that duty has a two-fold aspect. Except where the right has been abolished by statute, or, where

[6] Plaintiff filed this suit as a class action on behalf of himself and all other Case shareholders who are similarly situated. For convenience in this opinion, however, the singular "plaintiff" is used, with no reference being made to the class which he purports to represent, except where the context otherwise requires.

permissible, by provision in a corporate charter, the shareholders of a corporation have a preemptive right to participate ratably in the issuance of new shares of the corporation if they desire so to do. E.g., *Luther* v. *C. J. Luther Company*, 118 Wis. 112, 94 N. W. 69; *Spaulding* v. *North M. & T. S. Co.*, 106 Wis. 481, 494, 81 N. W. 1064; *Hammer* v. *Werner*, 239 App. Div. 38, 265 N. Y. S. 172. In addition to the preemptive right, the directors and officers of a corporation owe a fiduciary duty to not use their positions for their own personal advantage, or for the advantage of others, to the detriment of the interests of the stockholders of the corporation. E.g., *Luther* v. *C. J. Luther Co.*, *supra*, 94 N. W. at 72; *Hammer* v. *Werner*, *supra*; *Schwab* v. *Schwab-Wilson Mach. Corp., Ltd.*, 13 Cal. App. 2d 1, 55 P. 2d 1268. A breach of the duty owed to the shareholders of a corporation in that respect gives rise to a cause of action by the shareholders in their own right. *Ibid.* Count 1 of this complaint must be measured in the light of those established legal principles.

We are indebted to Judge Tehan for the following summary of the allegations of count 1 of the complaint which, with slight embellishment, is taken verbatim from his memorandum.

Count 1 of the complaint alleges that plaintiff, the owner of 2,000 shares of Case common stock acquired prior to the merger complained of, sues in a representative capacity on behalf of himself and all other common stockholders prior to the merger except those participating in or cognizant of the wrongdoing alleged. In addition to Case, he joins as defendants certain of its directors and former [fol. 747] directors, some of whom are also officers and former officers, and the executor of the estate of a deceased director. Defendants who are now directors of Case are sued individually and as directors, the defendant Rojtman is sued individually and as representative of American Tractor Corporation shareholders receiving Case stock as the result of the merger between Case and American Tractor Corporation, and the defendant Beeber is also sued, individually and as representative of holders of certain purchase warrants. In Count 1, the plaintiff alleges substantially as follows: In October 1956, Case formally

announced to its shareholders a proposed plan of merger between Case and American Tractor Corporation and proposed stock option amendments, which were purportedly approved by Case shareholders on November 15, 1956. The merger was purportedly consummated on January 10, 1957. Both the merger and stock option plan were effectuated by illegal and fraudulent acts and illegally deprived the plaintiff and other shareholders similarly situated of their preemptive right—rights which the plaintiff here seeks to enforce. Under the merger and plan, 648,852 shares of common stock and 1,197,704 shares of second preferred stock were set aside or issued without granting the plaintiff's class their pre-emptive rights to subscribe thereto.

The plaintiff then describes in some detail the acts which he believes to have resulted in a violation of the pre-emptive rights of Case shareholders as follows: In 1954, Elliott's company and a syndicate headed by him acquired 170,000 shares of American Tractor Corporation stock. Elliott violated the Securities Act of 1933 and regulations thereunder in connection with that stock and the sale of a portion thereof. Thereafter, the market price of American Tractor Corporation stock, most of which was held by Elliott, Rojtman and their associates, began an unreasonable rise, due to illegal manipulations, which manipulations Elliott was aware of prior to the merger. Rojtman, Brown, Grede and the Case management also knew prior to the merger that the market price of ATC stock was achieved illegally and artificially. Since the merger one person has been found guilty in another district court of manipulating ATC stock from May, 1955 to February, 1956; and Gilligan, Will and Company, formerly defendant in this cause and the specialist in ATC stock on the American Stock Exchange was found by the Securities and Exchange Commission to have engaged in improper and illegal [fol. 748] activities while specialist with respect to ATC stock.

Case directors violated Wisconsin law and breached their fiduciary duties to the shareholders in approving the merger by including future earnings of American Tractor Corporation and future services of its officials as partial consideration for issuance of Case stock, by agreeing to issue Case

stock at less than par value, by failing to evaluate properly the American Tractor Corporation assets acquired and paying an excessive price for American Tractor Corporation, by over-valuing American Tractor Corporation's and undervaluing Case's earnings and book value resulting in a fraud on Case shareholders, by relying on market price of American Tractor Corporation stock as a measure of American Tractor Corporation's value, by relying on American Tractor Corporation's own appraisal of its physical assets and failing to examine that appraisal, by considering future earnings as an element of value and by failing to recognize the necessity of future investments as part of the cost of the merger.

Case directors breached their fiduciary duties by approving and issuing a letter and proxy statement of October 15, 1956, prior to the meeting at which the merger was approved which contained numerous material omissions and false and misleading statements relied upon by Case shareholders in approving the merger and without which the merger would not have been approved. Three pages of the complaint are given over to instances thereof.

For example, it is alleged that defendants failed to disclose that the total purchase price of ATC exceeded $17,000,000, that the book value of Case common stock was $36.00 and ATC's only $1.15, that persons who negotiated the merger were recipients of stock options; and that one of the director defendants, as a supplier, would receive a substantial increase in business as a result of the merger, the merger was fair because in accordance with the comparative market prices of the two stocks, and the Case common shareholders would not be adversely affected when in fact their proportionate interest in the earnings, book value and voting power were seriously diluted.

Both the Case and American Tractor Corporation management groups were guilty of self dealing in connection with the plan and merger.

[fol. 749] The conduct of the defendants, the plaintiff claims, constitutes actual or constructive fraud on himself and other shareholders similarly situated depriving them of their pre-emptive rights. He claims that if they had

been permitted to purchase stock issued in the merger on the same basis as American Tractor Corporation shareholders, they could have obtained one-fourth share of common stock and one-half share of second preferred stock for $2.20 for each share of Case common stock held by them at the time of the merger.

In Paragraph 19 of Count 1 of his complaint, the plaintiff alleges facts occurring after the merger particularly, that Brown, Grede, Rojtman and other principal defendants were no longer with Case and that Case was nearly bankrupt, in Paragraph 20 he alleges that the class he represents has been irreparably damaged by failure to recognize pre-emptive rights, and in his prayer for relief he asks that the court enter judgment in favor of the class he represents and against Case directors who approved the merger and all defendants the court finds responsible for the merger and the consequent deprivation of pre-emptive rights in an amount to be determined and/or that the court enter a decree directing Case to issue to the class he represents such securities of Case as the court deems necessary to compensate the class for violation of pre-emptive rights, and asks for such other relief as equity shall require.

Judge Tehan was correct in his conclusion that the facts alleged in count 1 are basically consistent with the statement of a derivative cause of action to redress a wrong to the corporation, but that conclusion does not resolve the issue which is before us. Those same facts may also state a primary cause of action by a stockholder for relief from injury to himself resulting from unlawful and fraudulent practice. *Hammer* v. *Werner*, 239 App. Div. 38, 256 N. Y. S. 172; *Schwab* v. *Schwab-Wilson Mach. Corp., Ltd.*, 13 Cal. App. 2d 1, 55 P. 2d 1268; *Hagan* v. *Superior Court of Los Angeles County*, 2 Cal. Retr. 288, 348 P. 2d 896, 898.

In *Hagan*, for example, shareholders of a corporation intervened in a suit for dissolution of the corporation, alleging that the directors who had filed the suit for dissolution refused to recognize them as shareholders of the corporation, and that some of the directors had been parties to a scheme to fraudulently divert funds from the corporation to the detriment of the rights of the shareholders. The [fol. 750] trial court ordered the plaintiffs to provide se-

curity for costs of the suit pursuant to the provisions of the California Corporation Code. The shareholders then filed a prohibition suit in the California Supreme Court alleging that the trial court had threatened them with contempt if they sought to take any further action in the dissolution suit without first complying with the order to provide security for costs. In granting the writ of prohibition, the court held, 348 P. 2d at 898, that the security statute did not apply to the intervening shareholders who were seeking to vindicate their own rights, even though their complaint in intervention alleged facts which would also give rise to a cause of action by the corporation.

We think the trial court failed to recognize the principle that the same allegations of fact might support either a derivative suit or an individual cause of action by shareholders. We think count 1 of the complaint adequately states a cause of action for the redress of rights individual to the Case stockholders.[7]

Defendants' contentions that plaintiff is affected by the circumstances alleged in the same way as all stockholders of Case are affected, and that his suit is therefore, derivative, fails to take into account the realities of the circumstances alleged and the clear indication to the contrary of the Wisconsin decisions. If the allegations of the complaint are true, as we must assume them to be for present purposes, two separate categories of Case shareholders must be recognized, namely, those shareholders who participated in the practices alleged and benefited by the merger and related agreements and those shareholders who were not participants, with the result, as it is alleged, that their proportionate interest in the corporation was diluted. The former are expressly excluded from the class which plaintiff purports to represent. In this respect, this complaint cannot be distinguished from the complaint in *Luther* v. *C. J. Luther Co., supra,* in which a part of the

[7] Our conclusion is based upon the impression of the complaint as a whole, and it should not be construed as precluding the possibility that count 1 might contain specific allegations which are consistent with a derivative cause, only, and which are subject to being stricken as surplusage.

shareholders were aligned as plaintiffs against others as defendants.*

[fol. 751] One further contention of the defendants must be noted. They argue, citing *Dousman* v. *The Wisconsin & L. S. M. & S. Co.*, 40 Wis. 418, 422, that an individual cause of action to redress a violation of the rights of shareholders must be brought against the corporation alone. That position is not valid. In most of the cases in which courts have taken jurisdiction to vindicate the rights of shareholders, the suit has been against the corporation involved and its directors or other persons alleged to have been responsible for the injury. E.g., *Luther* v. *C. J. Luther Co., supra; Hammer* v. *Werner, supra; Schwab* v. *Schwab-Wilson Mach. Corp., Ltd., supra.* A director of a corporation acts as a fiduciary not only to the corporation but also to the stockholders, and the essence of a cause of action by a stockholder, based upon allegations of fraudulent acts by a director, is not the fraud against the corporation, but the fraud of the director as it affects the stockholders. *Schwab* v. *Schwab-Wilson Mach. Corp. Ltd., supra,* 55 P. 2d at 1269. While *Dousman* does contain statements which tend to support defendants' argument, such statements must be read in the light of the fact that only the corporation was named as a defendant in that suit. Moreover, to the extent that *Dousman* is authority for the proposition that a suit by an individual stockholder lies only against the corporation, its weight as authority is certainly undermined, if not overruled, by the later decisions in *Luther* and other Wisconsin cases.

We hold that count 1 of the complaint does state a cause of action on behalf of the stockholders individually, and that the court erred in holding that the provisions of the Wisconsin statute are applicable thereto.

---

* Closely related to that contention is the defendants' argument that a class suit will not lie for the redress of shareholders' rights. However, that argument does not affect the merit of the complaint as stating a primary cause of action, and we express no opinion as to the validity of the argument. If the argument is valid, it may be presented to the court below upon a proper motion directed against the complaint.

In considering the correctness of the court's decision as it relates to count 2 of the complaint,[9] an analysis of the court's opinion in the light of the procedural history of the case places the issues in perspective. The plaintiff's original complaint and his first amended complaint were based upon allegations of violations of state law, federal jurisdiction being predicated upon diversity of citizenship. After the court had held that the Wisconsin statute applied [fol. 752] to the cause of action, plaintiff obtained leave to file his second amended complaint alleging both a violation of state law and a violation of the Securities Exchange Act. That complaint set forth both of those alternative causes of action in a single count, alleging, insofar as the Securities Exchange Act was concerned, a violation of Section 14(a). On January 2, 1962, upon a hearing on defendants' motion to compel a bond for expenses under the Wisconsin statute, the court ordered that plaintiff file a third amended complaint stating, in separate counts, the alternative causes of action under state law and under Section 14(a). At the same time, the court asked the plaintiff to consider the application to his cause of action of the decision in *Dann* v. *Studebaker-Packard Corp.*, 6 Cir., 288 F. 2d 201.

Thereafter the third amended and supplemental complaint was filed. As the jurisdictional basis for count 2, plaintiff asserted diversity of citizenship between the parties, Section 27 of the Securities Exchange Act and Sections 1331 and 1337 of the Judicial Code. 28 U. S. C. A. 1331, 1337.

By reference, plaintiff realleged substantially all of the charging paragraphs contained in count 1 of the complaint. He alleged that the merger between Case and ATC was consummated early in 1957, following its approval by a vote of two-thirds of the outstanding common and preferred shares of Case at a special stockholders meeting held for that purpose. The count alleged that the proxy solicitation material issued by the defendants prior to that special meeting was false and misleading and its use con-

[9] We are aided in our consideration of this issue by an exhaustive brief filed by the Securities and Exchange Commission as amicus curiae.

stituted a violation of Section 14(a) of the Act and the SEC Rules promulgated thereunder. 17 CFR 240.14a-3, 140.14a-9. The theory of the cause of action stated in that count was the contention that the Case-ATC merger and stock option agreements approved by the vote of proxies given by shareholders of Case in response to allegedly unlawful proxy solicitation material were void agreements under the provisions of Section 29(b) of the Act, 15. U. S. C. A. 78cc(b). Plaintiffs sought relief declaring that the proxy solicitation material was false and misleading, that the proxies solicited thereby were illegal and void, and that the merger and all agreements entered into pursuant thereto were void. He also prayed damages for injuries sustained by himself and all other stockholders similarly situated which grew out of violation of the Act, and such other and further relief as equity might require.

[fol. 753] In ruling upon the defendants' motion for security and in holding that the Wisconsin statute applied in part to count 2 thereof, the court relied upon the decision in the *Dann* case. Thus the court held that federal jurisdiction in a civil action for violation of the provisions of Section 14(a) is limited to the granting of prospective relief, *i.e.*, a declaration of the validity of the proxy solicitation material as the merits of the cause might require. The court further held that count 2, insofar as it alleged a cause of action for damages and relief other than a declaratory judgment of the invalidity of the proxy solicitation material, was a suit arising under state law to which the Wisconsin statute applied. Finally, the court held that the allegations of count 2 did not state a cause of action for violation of Section 10(b) of the Act.

We think the court correctly held that Section 10(b) of the Act has no application to the facts alleged in the complaint at bar. That section and Rule 10(b)-5, promulgated thereunder, 17 CFR 240.10b-5, prohibits the use of manipulative and deceptive devices in connection with the purchase or sale of securities, and afford a basis for a civil remedy for damages and other relief to persons injured by the use of such practices. E.g., *Ellis* v. *Carter*, 9 Cir., 291 F. 2d 270; *Smith* v. *Bear*, 2 Cir., 237 F. 2d 79; *Hooper* v. *Mountain States Securities Corp.*, 5 Cir., 282 F. 2d 195;

cert. denied, 365 U. S. 814. We need not consider whether misleading proxy material may, under any circumstances, constitute a manipulative and deceptive device within the prohibition of that Section, and we express no opinion upon that subject. We hold only that the facts alleged in this complaint directly invoke the provisions of Section 14(a), and that only sheer speculation can bring the provisions of 10(b) into play.[10]

[fol. 754] The critical issue with respect to the decision below as it relates to count 2 is the question whether the trial court correctly held that federal jurisdiction in a civil cause of action for enforcement of the provisions of Section 14(a) is limited to declaratory relief. Since the court below relied in its decision on the *Dann* case, we approach that issue from an analysis of *Dann*.

The complaint in *Dann*, filed by a stockholder of Studebaker, alleged the waste and dissipation of Studebaker

---

[10] The second amended complaint alleged a violation of Section 14(a) only. After plaintiff was directed to file a third amended complaint stating his alternative causes of action in separate counts, and after plaintiff had been requested to consider the impact of the *Dann* decision upon his complaint, he filed his third amended complaint in which he alleged the violation of 10(b) as well as 14(a). We think it not unreasonable to infer, as Judge Tehan did, that 10(b) was alleged in an attempt to circumvent *Dann*.

It also appears that count 2 was muddied by the allegations of diversity of citizenship for the same purpose. In the reasoning of the *Dann* opinion leading to the conclusion that there was no jurisdiction to award the relief prayed upon the merits of the complaint, the court observed that there was no allegation of diversity of citizenship to support jurisdiction over what the court construed to be a cause arising under state law. Plaintiff argues, or implies, that the court predicated its decision that there was no federal jurisdiction upon the lack of diversity allegations. He seeks to distinguish *Dann* from this complaint upon that basis. His analysis of *Dann* is false in that regard. The court had held that there was no jurisdiction under Section 27 of the Securities Act, and no cause of action arising under a statute of the United States. Its discussion of diversity was directed to a determination whether the allegations of the complaint would sustain federal jurisdiction to decide questions of state law. If there be jurisdiction under Section 27, that jurisdiction is neither enlarged nor diminished by the existence, or non-existence, of diversity of citizenship.

The diversity allegations of count 2 are wholly surplusage.

assets growing out of a fraud upon the shareholders of Studebaker, which allegedly resulted from the use of false and misleading proxy solicitation materials. The complaint predicated jurisdiction upon the provisions of Section 27 of the Act and Section 1331 of the Judicial Code. The complaint prayed that the court declare void proxies solicited in violation of the provisions of Section 14(a), and, in the event that the court found that such void proxies had controlled the vote of Studebaker stockholders approving the arrangement between Studebaker and Curtiss-Wright Corporation of which complaint was made, that the court would, by its decree, restore Studebaker to its economic condition which had obtained prior to consummation of the arrangement with Curtiss.

The trial court dismissed the complaint. The Court of Appeals reversed, holding that a cause of action was stated under Section 14(a). Thus the court held that a civil suit by a shareholder will lie to enforce the provisions of that section. The court, however, having determined that a federal cause of action was stated by the complaint, then addressed itself to the question whether it had jurisdiction to grant the relief sought in the complaint. 288 F. 2d at 210-215. In reliance upon language contained in the opinion in *Gully* v. *First National Bank*, 299 U. S. 109, 117-118, the court concluded that federal jurisdiction under Section 14(a) is limited to declaratory relief related to the validity or invalidity of proxies obtained in violation of the Act. Thus the court said, 288 F. 2d at 214:

> [fol. 755] "• • • In reaching this decision, we are deciding that federal jurisdiction must end with the holding of a contested proxy election, that the right created by Section 14(a) of the Exchange Act is only broad enough to permit consideration of the *validity* of the proxies solicited in violation thereof, but it is not broad enough to permit the federal courts to determine the consequent *effects* of the validity or invalidity of said proxies."

Finally, the court held that the right to damages and other restrospective relief arising out of a violation of

14(a) is a question of state law, because such a remedy requires the interpretation and application of state, as well as federal law.

We respectfully disagree with the decision in *Dann* for two reasons. First, the court failed to note a critical distinction between the jurisdictional facts of *Gully* and *Dann*, namely, that a federal statute was involved only collaterally in the former, whereas the whole right of action in the latter was derived from a federal statute.

Gully was a suit by a state to collect local taxes levied against a national bank. The only ground upon which federal jurisdiction could be claimed was the fact that the bank had been chartered under an Act of Congress. Upon that factual background, the court held that the case arose under state law, uninfluenced by the fact that a federal statute had a collateral bearing thereon.[11]

By contrast, in *Dann* the complaint alleged a direct violation of a federal statute. Thus the controversy is a basic one requiring the interpretation and application of a federal statute. The rationale of *Gully* has no bearing upon the jurisdictional question.

Second, in our opinion, the court in its reasoning failed to distinguish between the question of jurisdiction and the question upon the merits of the case whether the plaintiffs were entitled to the relief which they sought. See, concurring opinion, Miller, C. J. 288 F. 2d at 217, 218.

Section 14(a) prohibits the solicitation of proxies of securities listed on a national exchange in violation of SEC Rules promulgated thereunder. Rule 14a-9 prohibits the use of false and misleading statements with respect to any material fact or the omission of material facts which [fol. 756] would render any statement contained in a proxy solicitation false or misleading. 17 CFR 240.14a-9.

Section 27 of the Act vests exclusive jurisdiction in the United States District Courts over violations of the Act or SEC Rules and over all suits in equity or actions at law brought to enforce any liability or duty created by the Act or SEC Rules.

---

[11] See also, *Chicago & N. W. Ry. Co. v. Toledo, P. & W. R. Co.*, S. D. Ill., —— F. Supp. ——.

The obvious purpose of Section 14(a) is the protection of the right of shareholders to a full and fair disclosure of all material facts which affect corporate elections by proxy. *Dann* v. *Studebaker-Packard Corp.*, *supra*, at 208. See also *SEC* v. *Transamerica Corp.*, 3 Cir., 163 F. 2d 511, 518, cert. denied 332 U. S. 847. For the achievement of that purpose, the jurisdiction conferred by Section 27 must be broad enough to effectively protect that right. Thus, it is said in *Bell* v. *Hood*, 327 U. S. 678, 684, that federal courts have the power, under a general grant of jurisdiction to enforce a federal statute, to grant all of the relief which may be commensurate with the effective enforcement of the statute and the protection of rights created thereby, notwithstanding the failure of the statute to specify the remedies which may be employed.

Indeed, Section 27 has many times been so construed in cases arising under Section 10(b), the courts holding that the jurisdictional grant includes the power to award damages and other retrospective relief. E.g., *Ellis* v. *Carter*, 9 Cir., 291 F. 2d 270; *Hooper* v. *Mountain States Securities Corp.*, 5 Cir., 282 F. 2d 195, cert. denied 365 U. S. 814; *Smith* v. *Bear*, 2 Cir., 237 F. 2d 79; *Fischman* v. *Raytheon Mfg. Co.*, 2 Cir., 188 F. 2d 783; *Kohler* v. *Kohler Co.*, E. D. Wis., 208 F. Supp. 808, 820. In at least two cases decided prior to *Dann*, the courts assumed the existence of power under Section 27 to award retrospective relief by whatever remedy might be necessary in a particular case to protect the rights created under Section 14(a). *SEC* v. *Transamerica Corp.*, 3 Cir., 163 F. 2d 511, 518, cert. denied 332 U. S. 847; *Mack* v. *Mishkin*, S. D. N. Y., 172 F. Supp. 885, 889. *Contra*, *Howard* v. *Furst*, S. D. N. Y., 142 F. Supp. 507, aff'd on other grounds, 2 Cir., 238 F. 2d 790, cert. denied 353 U. S. 937.

In *Deckert* v. *Independence Shares Corp.*, 311 U. S. 282, the Court, applying the provisions of the Securities Act of 1933, which were similar to the provisions of Section 27, held that purchasers of securities sold in violation of the [fol. 757] Act had a civil cause of action, not only against the vendor of the securities and other persons specified in Section 12(a) of the Act, but also against a third person having assets of the vendor in its possession. The court

said, in part, 311 U. S. at 288: "The power *to enforce* implies the power to make effective the right of recovery afforded by the Act. And the power to make the right of recovery effective implies the power to utilize any of the procedures or actions normally available to the litigant according to the exigencies of the particular case * * *."

In other cases the courts have held a general grant of jurisdiction to the district courts to enforce a federal statute effective to authorize the appointment of a receiver in a suit for violation of the Investment Company Act of 1940,[12] *Aldred Investment Trust* v. *SEC*, 1 Cir., 151 F. 2d 254, 261, cert. denied 326 U. S. 795, a decree of restitution of rents collected in excess of the maximum rents permissible under the Emergency Price Control Act of 1942,[13] *Porter* v. *Warner Holding Company*, 328 U. S. 395, a decree of restitution for loss of wages resulting from a violation of the Fair Labor Standards Act of 1938,[14] *Mitchell* v. *Robert DeMario Jewelry, Inc.*, 361 U. S. 288, 291, and a decree of divestiture of property held in violation of Sections 1 and 2 of the Sherman Act.[15] *Schine Chain Theatres, Inc.* v. *United States*, 334 U. S. 110.

We think the same principle must be applied in determining the scope of federal jurisdiction for the protection of rights created by Section 14(a). We hold that the court below has jurisdiction under Section 27 to award damages or such other retrospective relief to the plaintiff as the merits of the controversy may require.

The court below erred in holding the Wisconsin statute applicable to count 2. *McClure* v. *Borne Chemical Co.*, 3 Cir., 292 F. 2d 824, cert. denied 368 U. S. 939; *Fielding* v. *Allen*, 2 Cir., 181 F. 2d 163, cert. denied, *sub nom. Ogden Corp.* v. *Fielding*, 340 U. S. 817.

[fol. 758] The order dismissing plaintiff's third amended complaint is reversed, and the cause is remanded to the court below for further proceedings consistent with this opinion.

---

[12] 15 U. S. C. A. 80a-35.

[13] 50 App. U. S. C. A. 925(a).

[14] 29 U. S. C. A. 215(a), 217.

[15] 15 U. S. C. A. 1, 2.

[fol. 759]

IN UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

Before Hon. F. Ryan Duffy, Circuit Judge, Hon. Roger J. Kiley, Circuit Judge, Hon. Frederick O. Mercer, District Judge.

No. 13947

CARL H. BORAK, Plaintiff-Appellant,

vs.

J. I. CASE COMPANY, et al., Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Wisconsin.

JUDGMENT—May 29, 1963

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Wisconsin, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the order of the said District Court dismissing plaintiff's third amended complaint in this cause appealed from be, and the same is hereby, Reversed, with costs, and that this cause be, and it is hereby, Remanded to the said District Court for further proceedings consistent with the opinion of this Court filed this day.

[fol. 760] CLERK'S CERTIFICATE (omitted in printing).

[fol. 761]

SUPREME COURT OF THE UNITED STATES

No. 402, October Term, 1963

J. I. CASE COMPANY, et al., Petitioners,

vs.

CARL H. BORAK, etc.

ORDER ALLOWING CERTIORARI—November 12, 1963

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.